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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 122

**CHICOT COUNTY DRAINAGE DISTRICT,
PETITIONER,**

vs.

**THE BAXTER STATE BANK AND MRS. LENA S.
SHIELDS**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT**

PETITION FOR CERTIORARI FILED JUNE 19, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.

SUPREME COURT OF THE UNITED STATES

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PETITIONER,

vs.

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SHIELDS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
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[fol. A]

[Caption omitted]

[fol. 1]

**IN UNITED STATES DISTRICT COURT FOR THE
WESTERN DIVISION OF THE EASTERN DISTRICT
OF ARKANSAS.**

8342

THE BAXTER STATE BANK and MRS. LENA S. SHIELDS,

vs.

CHICOT COUNTY DRAINAGE DISTRICT, Defendants

COMPLAINT-AT-LAW—FILED July 24, 1937

That the plaintiff, The Baxter State Bank, is a corporation organized and doing business under the laws of the State of Kansas; domiciled at Baxter Springs, Kansas; and Lena S. Shields is a resident of Baxter Springs, Kansas; that the defendant is a local improvement district organized under an Act of the General Assembly of Arkansas designated as Special Act 405 of the Extraordinary Session of 1920, approved February 20, 1920, and amended by Act 432 of the General Assembly of 1921 and under the general drainage law of Arkansas approved May 27, 1909 in Chicot County in the Eastern District, Western Division of this Court.

By the terms and under the authority of said Acts of the General Assembly of Arkansas the defendant issued and the plaintiffs purchased for value and before maturity and is the owner of the following bond of defendant district:

STATE OF ARKANSAS, COUNTY OF CHICOT

Chicot County Drainage District

5½% Drainage Bond

Know All Men By These Presents; That Chicot County Drainage District, of the County of Chicot, in the State of [fol. 2] Arkansas, acknowledges itself to owe and for value received, hereby promise to pay to bearer the sum of One Thousand Dollars in gold coin of the United States of America of the present standard of weight and fineness on

the fifteenth day of October, 1936, with interest thereon from the fifteenth day of April, 1924, at the rate of five and one half percentum, payable semi-annually on the fifteenth day of April and October in each year, on presentation and surrender of the annexed interest coupons as they severally mature. Both principal and interest of this bond are hereby made payable at the office of the Liberty Central Trust Company, in the City of St. Louis, State of Missouri.

This bond is one of a series of like tenor and effect except as to maturity, aggregating Eight Hundred and Fifty Thousand Dollars (\$850,000.00), numbered from One (1) to eight hundred and Fifty (850) inclusive, issued for the purpose of hastening the work of constructing a system of drainage in said Chicot County Drainage District, under and pursuant to and in full compliance with the Constitution and Laws of the State of Arkansas, including among others, Act Number 405 of the Extraordinary Session of the General Assembly of the State of Arkansas of the year 1920, entitled, "An Act to Create and Establish the Chicot County Drainage District in Chicot County, to Provide for a Board of Commissioners; Assessment of Benefits, Collection of Taxes, Issuance of Bonds, Construction of Drains and Ditches and for Other Purposes," approved February 25, 1920, Act No. 432 of the Acts of said General Assembly of the year 1921, entitled, "An Act to Amend Section 16 of Act No. 405 of the General Assembly of the State of Arkansas, approved February 25, 1920," [approved February 25, 1920";] approved March 25, 1921, and an Act of the General Assembly of the State of Arkansas, of the year 1909, entitled, "An Act to Provide for the Creation of Drainage Districts in this State," approved May 27, 1909, as amended, and under and in full compliance with every provision contained in said acts and with orders, resolutions and proceedings of the County Court of said County and the Board of Commissioners of said Drainage District duly and legally had and adopted. This bond and [fol.3] attached interest coupons, as well as all other bonds and coupons forming a part of this issue, are payable out of the proceeds of taxes heretofore legally levied upon the real property, public roads, railroads and [tramroads] embraced within said District and benefited by said improvement, and are secured by a prior tax lien on all of said real property, public roads, railroads and tramroads.

The Drainage District hereby covenants that said District is duly and legally existing as a drainage district under the Constitution and Laws of the State of Arkansas; that the real property, public roads, railroads and tramroads within the District have been duly assessed for the making of said improvement as required by law, and said assessment of benefits has been duly pledged and mortgaged for the security of this bond; that all acts, conditions and things required to be done, precedent to and in the issuing of this bond, including the organization of said District, the adjudication of the benefits and damages against the real property, public roads, railroads and tramroads therein and in levying the drainage tax, have been done, have happened and have been performed in regular and due form as required by law; and that the total amount of bonds issued by said District, including this bond, does not exceed the available benefits assessed or the taxes levied and uncollected at the time said bonds are issued, or any statutory or constitutional limitations. For the faithful performance of all covenants, recitals and stipulations herein contained, for the proper application of the proceeds of the taxes heretofore or hereafter levied, and for the faithful performance in apt time and manner of every official act required and necessary to provide for the prompt payment of the principal and interest of this bond, as the same mature, the full faith, credit, assessment of benefits heretofore or hereafter assessed, and all other resources of said Drainage District are hereby irrevocably pledged.

This bond shall not be valid until it shall have been authenticated by the certificate hereon duly signed by the Liberty Central Trust Company, of St. Louis, Missouri.

[fol. 4] In Witness Whereof, Chicot County Drainage District of Chicot County, in the State of Arkansas, has caused this bond to be signed by the members of its Board of Commissioners, attested with its corporate seal and has caused the interest coupons hereunto attached to be executed with the fac-simile signature of the Chairman of its Board of Commissioners on the fifteenth day of April, 1924.

Chicot County Drainage District of Chicot County,
Arkansas, by Joe Sloss, R. D. Chotard, C. M.
Matthews, C. F. Wilson, Herman Carlton, Commis-
sioners.

That the plaintiffs own the following bonds of defendant district including the above, to-wit:

| Bond No. | Maturity | Amount |
|----------|------------------|------------|
| 197 | October 15, 1930 | \$1000.00 |
| 207 | October 15, 1936 | 1000.00 |
| 299 | October 15, 1939 | 1000.00 |
| 312 | October 15, 1939 | 1000.00 |
| 402 | October 15, 1941 | 1000.00 |
| 587 | October 15, 1945 | 1000.00 |
| 588 | October 15, 1945 | 1000.00 |
| 589 | October 15, 1945 | 1000.00 |
| 590 | October 15, 1945 | 1000.00 |
| 591 | October 15, 1945 | 1000.00 |
| 825 | October 15, 1949 | 1000.00 |
| 826 | October 15, 1949 | 1000.00 |
| 827 | October 15, 1949 | 1000.00 |
| 834 | October 15, 1949 | 1000.00 |
| | | \$14000.00 |

with interest at five and one half percent from October 1932 to date.

That the interest on said bonds were regularly paid from date in April 1924 until October 1932 and the same has remained and been in default since and is past due for more than four years; that the plaintiff has and does hereby exercise its option to declare the entire list of bonds due [fol. 5] and payable; that demand for payment has been made and refused.

Wherefore, plaintiff prays judgment for amount of said bonds with interest as aforesaid.

A. J. Johnson, Its Attorney.

Deily sworn to by A. J. Johnson. Jurat omitted in printing.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SUMMONS AND MARSHAL'S RETURN—Filed July 28, 1938

The President of the United States of America,
To the Marshal of the Eastern District of Arkansas,
Greeting:

You Are Hereby Commanded, That you summon C. M. Matthews, Chairman, N. W. Bunker, Sam Epstein, B. C. [fol. 6] Clark and F. H. Dantzler, Commissioners of Chicot

County Drainage District late of your District, if they may be found therein, so that they be and appear within 20 days after service of this summons before the United States District Court for the Eastern District of Arkansas, at Little Rock next to answer to Complaint of The Baxter State Bank, et al.

And have you then and there this writ.

Witness, the Honorable Thomas C. Trimble, Jr., United States District Judge at Little Rock, Ark., this 24th day of July, A. D. 1937.

Sid B. Redding, Clerk, by Darden Moose, Deputy Clerk. (Seal.)

Received the within writ at Little Rock, Arkansas on July 24, 1937 and executed the same by serving the within C. M. Matthews, Chairman of Chicot County Drainage District, N. W. Bunker, Sam Epstein, B. C. Clark, and F. H. Dantzler, Commissioners of said [District] by copy in person to each at Lake Village, Arkansas, on July 26, 1937.

V. C. Pettie, U. S. Marshal, by J. L. McBurnett, Deputy.

Received 7-24-37 U. S. Marshal's Office, Little Rock, Arkansas.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER—Filed Sept. 14, 1937

Comes the defendant, Chicot County Drainage District, by its attorneys, Owens, Ehrman & McHaney, and for answer to plaintiff's complaint, states:

Defendant admits that the plaintiff The Baxter State Bank is a corporation organized and doing business under the laws of the State of Kansas; that the plaintiff Lena S. Shields is a resident of the State of Kansas; and that the defendant is a local improvement district organized under [fol. 7] the Acts of the General Assembly of the State of Arkansas, as alleged in plaintiffs' complaint.

Defendant admits that it issued certain bonds, and that among said bonds were the following:

| Bond No. | Maturity | Amount |
|----------|------------------|-------------|
| 197 | October 15, 1936 | \$1,000.00 |
| 207 | October 15, 1936 | 1,000.00 |
| 290 | October 15, 1939 | 1,000.00 |
| 312 | October 15, 1939 | 1,000.00 |
| 402 | October 15, 1941 | 1,000.00 |
| 587 | October 15, 1945 | 1,000.00 |
| 588 | October 15, 1945 | 1,000.00 |
| 589 | October 15, 1945 | 1,000.00 |
| 590 | October 15, 1945 | 1,000.00 |
| 591 | October 15, 1945 | 1,000.00 |
| 825 | October 15, 1949 | 1,000.00 |
| 826 | October 15, 1949 | 1,000.00 |
| 827 | October 15, 1949 | 1,000.00 |
| 834 | October 15, 1949 | 1,000.00 |
| | | \$14,000.00 |

Defendant has no knowledge as to the present ownership of said bonds as above mentioned, and; therefore, denies that plaintiffs are the owners thereof.

Further answering, defendant states that on or about the 17th day of June 1935, it filed in the United States District Court for the Western Division of the Eastern District of Arkansas its petition for authority to effect a plan of debt readjustment under and by virtue of the provisions of the Act of July 1, 1938, as amended, and more particularly C. 541, Paragraphs 78, 79, and 80 thereof, as added May 24, 1934, U. S. C. A. Title 11, Paragraphs 301, 302, and 303.

That the plaintiffs in the present action were given notice of the proceedings thereunder and were parties to said suit.

That the Chicot County Drainage District, defendant herein, was declared a bankrupt in said proceeding, it being styled: "In the Matter of Chicot County Drainage District Bankrupt, No. 4357." That on the 28th day of March, 1936, the District Court of the United States for the Western Division of the Eastern District of Arkansas rendered [fol. 8] a final decree in said proceeding, copy of which is attached hereto, marked "Exhibit 'A'" and made a part hereof. That under the terms and provisions of said decree, plaintiffs have no valid claim against the defendant herein, and said plaintiffs were, under the terms and provisions of said decree, forever restrained and enjoined from asserting any claim or demand whatsoever against defendant herein, except as provided in said decree.

That no appeal has been prosecuted from said decree, and that time for appeal therefrom has expired, and that therefore plaintiffs are bound by its provisions and cannot prosecute this action. Defendant specifically pleads said aforementioned decree as res adjudicata of the issues involved in this action.

Wherefore, defendant prays that the complaint be dismissed and the defendant be permitted to go hence with its costs.

Grocer T. Owens, S. Lasker Ehrman, E. L. McHaney, Jr., Attorneys for Defendant.

[File endorsement omitted.]

EXHIBIT "A" TO ANSWER.

Final Decree

In the United States District Court Within and For the Eastern District of Arkansas, Western Division

In the Matter of

The Petition for Debt Readjustment of Chicot County Drainage District

No. 4357. In Bankruptcy

This cause came on before me this day to be heard upon the application of petitioning district for an order finally discharging it from all liability for and decreeing the cancellation and annulment of its outstanding old obligations affected by and refinanced pursuant to its plan of debt [fol. 9] readjustment heretofore approved by this Court, and upon the written report filed with the Clerk of this Court by Joe H. Schneider, the Disbursing Agent heretofore appointed in this cause, and the Court having seen and examined the application and report and the evidence offered in support thereof, and being fully advised in the premises, finds:

(1) That the petition for debt readjustment filed in this cause by the petitioning district and the [acceptance] and approval thereof by holders of more than thirty per centum (30%) of each class of its outstanding indebtedness

were, in all things, in compliance with law and have been duly approved by this Court; and

(2) That the plan of debt readjustment as set forth in the petition filed in this cause was duly accepted and approved by the holders of more than sixty-six and two-thirds per centum (66 $\frac{2}{3}$ %) of each class of its outstanding indebtedness affected thereby, was proposed and accepted in good faith, is fair, equitable and just, and does not discriminate unfairly in favor of any class of creditors, and has been duly approved by this Court; and

(3) That in order to raise the funds with which to fully consummate its plan of debt readjustment, the petitioning district, with the approval of this Court, has issued and sold its new serial bonds to the Reconstruction Finance Corporation, an agency of the United States Government, in the principal sum of \$193,500.00, all dated July 1, 1935, bearing interest from date until paid at the rate of four per centum (4%) per annum, payable semi-annually, and evidenced by interest coupons thereto attached, the numbers, principal amount and maturity dates thereof being as follows:

| No. of Bonds | Denomination | Amount | Maturity |
|------------------------------|--------------|-----------|--------------|
| 1 to 3, incl. | \$1000.00 | \$3000.00 | July 1, 1939 |
| 4 | 500.00 | 500.00 | July 1, 1939 |
| 5 to 7, incl. | 1000.00 | 3000.00 | July 1, 1940 |
| 8 | 500.00 | 500.00 | July 1, 1940 |
| 9 to 11, incl. | 1000.00 | 3000.00 | July 1, 1941 |
| 12 | 500.00 | 500.00 | July 1, 1941 |
| 13 to 16, incl. | 1000.00 | 4000.00 | July 1, 1942 |
| 17 to 20, incl. | 1000.00 | 4000.00 | July 1, 1943 |
| 21 to 24, incl. [fol. 10] | 1000.00 | 4000.00 | July 1, 1944 |
| 25 to 28, incl. | 1000.00 | 4000.00 | July 1, 1945 |
| 29 | 500.00 | 500.00 | July 1, 1945 |
| 30 to 33, incl. | 1000.00 | 4000.00 | July 1, 1946 |
| 34 | 500.00 | 500.00 | July 1, 1946 |
| 35 to 38, incl. | 1000.00 | 4000.00 | July 1, 1947 |
| 39 | 500.00 | 500.00 | July 1, 1947 |
| 40 to 44, incl. | 1000.00 | 5000.00 | July 1, 1948 |
| 45 to 49, incl. | 1000.00 | 5000.00 | July 1, 1949 |
| 50 to 54, incl. | 1000.00 | 5000.00 | July 1, 1950 |
| 55 | 500.00 | 500.00 | July 1, 1950 |
| 56 to 60, incl. | 1000.00 | 5000.00 | July 1, 1951 |
| 61 | 500.00 | 500.00 | July 1, 1951 |
| 62 to 67, incl. | 1000.00 | 6000.00 | July 1, 1952 |
| 68 to 73, incl. | 1000.00 | 6000.00 | July 1, 1953 |
| 74 to 79, incl. | 1000.00 | 6000.00 | July 1, 1954 |
| 80 | 500.00 | 500.00 | July 1, 1954 |
| 81 to 86, incl. | 1000.00 | 6000.00 | July 1, 1955 |
| 87 | 500.00 | 500.00 | July 1, 1955 |
| 88 to 93, incl. | 1000.00 | 6000.00 | July 1, 1956 |
| 94 | 500.00 | 500.00 | July 1, 1956 |
| 95 to 101, incl. | 1000.00 | 7000.00 | July 1, 1957 |

| No. of Bonds | Denomination | Amount | Maturity |
|-------------------|--------------|-----------|--------------|
| 102 to 108, incl. | 1000.00 | 7000.00 | July 1, 1958 |
| 109 | 500.00 | 500.00 | July 1, 1958 |
| 110 to 116, incl. | 1000.00 | 7000.00 | July 1, 1959 |
| 117 | 500.00 | 500.00 | July 1, 1959 |
| 118 to 125, incl. | 1000.00 | 8000.00 | July 1, 1960 |
| 126 to 133, incl. | 1000.00 | 8000.00 | July 1, 1961 |
| 134 to 141, incl. | 1000.00 | 8000.00 | July 1, 1962 |
| 142 | 500.00 | 500.00 | July 1, 1962 |
| 143 to 151, incl. | 1000.00 | 9000.00 | July 1, 1963 |
| 152 to 160, incl. | 1000.00 | 9000.00 | July 1, 1964 |
| 161 to 169, incl. | 1000.00 | 9000.00 | July 1, 1965 |
| 170 | 500.00 | 500.00 | July 1, 1965 |
| 171 to 180, incl. | 1000.00 | 10,000.00 | July 1, 1966 |
| 181 to 190, incl. | 1000.00 | 10,000.00 | July 1, 1967 |
| 191 | 500.00 | 500.00 | July 1, 1967 |
| 192 to 201, incl. | 1000.00 | 10,000.00 | July 1, 1968 |
| 202 | 500.00 | 500.00 | July 1, 1968 |

\$193,500.00

And that so far as these proceedings are concerned, the new bonds are valid and enforceable obligations of the petitioning district; and

(4) That prior to the issuance and sale of the new bonds mentioned last above, the Reconstruction Finance Corporation, with the approval of this Court and in accordance with the plan of debt readjustment, has purchased certain of the outstanding old obligations of the petitioning district, to-wit; bonds of the district in the sum of \$705,087.06, [fol. 11] which were later cancelled and delivered to the petitioning district in exchange for its new bonds equal to the amount paid for the old bonds or obligations so purchased, plus four per centum (4%) interest thereon to the date of exchange, and

(5) That from the proceeds received by the petitioning district from the sale of its new bonds to the Reconstruction Finance Corporation, and funds contributed by the petitioning district, the sum of \$20,603.10 was turned over to the Honorable Sid B. Redding, Clerk of this Court, as Registrar; and that the Disbursing Agent has filed in this cause his written report fully showing that the Reconstruction Finance Corporation purchased all of the old bonds of the district, other than the sum of \$57,449.30 which have not been made available for refinancing as directed by the plan of readjustment and the decree of this court, and a detailed statement of such outstanding obligations is attached thereto; that as none of the outstanding bonds were deposited with him for retirement as directed by the decree, the sum necessary to pay the holders thereof the amount

found to be due, under the plan and decrees of this court, to-wit, the sum of \$20,603.10 was deposited with the Honorable Sid B. Redding, Clerk of this Court, for disbursement as provided in the decree and supplemental decree entered February 5, 1936, and the report should be approved and the Disbursing Agent discharged from further duties and liabilities as such; and

(6) That all costs, expenses, fees and other charges properly chargeable to the petitioning district in this cause, have been duly approved and paid.

It is Therefore Ordered, Adjudged and Decreed as follows:

(a) That the official acts of Joe H. Schneider, Disbursing Agent, as set forth and certified to in his report filed in this cause, be and the same are hereby approved and confirmed, and that his duties as Disbursing Agent be terminated and his liabilities thereunder be forever discharged; and

(b) That the sum of \$20,603.10 paid into the registry of this Court, be disbursed by the registrar for the purpose [fol. 12] of taking up and retiring and refinancing, in accordance with the plan of debt readjustment approved in this cause, such remaining outstanding old obligations of the petitioning district as are affected by the plan of debt readjustment, and which may be presented to the Registrar for that purpose within the period of one year from the date hereof; that all such obligations so presented and paid for, be forthwith cancelled and returned to the petitioning district by the Registrar; that all such outstanding old obligations of the petitioning district which are not so presented to the Registrar within one year from the date hereof shall thereafter be forever barred from participating in the plan of debt readjustment or in the funds held in the registry of this Court; that upon the expiration of the period of one year from the date hereof, the Clerk of this Court shall forthwith notify the Reconstruction Finance Corporation, by registered letter addressed to it at Washington, D. C., of the amount of funds then remaining in the registry of the Court, and that the same are available for the purchase of new bonds of the petitioning district then held by the Reconstruction Finance Corporation, at par and accrued interest; that any new bonds so purchased shall be forthwith cancelled and returned to the

petitioning district by the Registrar; that any part of such funds which are not used for such purpose within sixty days after the date of the mailing of such notice, shall thereupon be paid by the Registrar of this Court to and used solely by the petitioning district in the payment of its new bonds and interest thereon; and

(c) That all the old bonds and other obligations of the petitioning district affected by the plan of debt readjustment approved in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioning district, except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from other wise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof; and

[fol. 13] (d) That the new or refunding bonds issued and sold by the petitioning district to the Reconstruction Finance Corporation and the collection of the principal and interest thereon, shall not in any wise be adversely affected by these proceedings, or by any order, judgment or decree entered or rendered in this cause; and

(e) That all proceedings necessary for fully effecting the plan of debt readjustment contemplated by this action, except the ministerial duties of the Registrar of this Court as provided herein, have been done and performed in accordance with law, and that all and singular the orders, judgments and decrees heretofore entered and rendered in this cause, be and the same are hereby ratified and confirmed.

Done at Little Rock, Ark., on this the 28 day of March, 1936.

John E. Martineau, Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

DEMURRER TO ANSWER—Filed Sep. 27, 1937

Comes the plaintiffs herein and demurs to the answer of the defendants and for cause states:

Demurrer does not state facts sufficient to constitute a defense to the cause of action.

Wherefore, the plaintiff prays that answer be stricken from the files and for judgment as prayed in the complaint.

A. J. Johnson, Its Attorney.

[File endorsement omitted.]

[fol. 14] IN UNITED STATES DISTRICT COURT

STIPULATION WAIVING JURY—Filed Feb. 24, 1938

It is hereby agreed and stipulated by and between counsel for the plaintiffs and counsel for defendant that this case may be tried before the court without a jury, and a jury trial is hereby waived.

A. J. Johnson, G. W. Hendricks, Attorneys for Plaintiffs. Owens, Ehrman & McHaney, by E. L. McHaney, Jr., Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

No. 8342

THE BAXTER STATE BANK and MRS. LENA S. SHIELDS, Plaintiffs

vs.

CHICOT [—] DRAINAGE DISTRICT, Defendant

JUDGMENT—June 2, 1938

On the 17th day of May, 1938, this cause having come on for hearing before the Court sitting as a jury, the jury

having been waived by both parties in open court, and the same having been submitted to the Court upon the complaint of the plaintiffs, the answer of the defendant, the plaintiffs' demurrer to the answer, and the testimony introduced by the plaintiffs and by the defendant, and the records and papers filed with the clerk of this court in a cause styled, "In the Matter of Chicot County Drainage District, Bankrupt, No. 4357", together with the original bonds sued on, and the pledge securing said bonds, and the Court having taken said cause under advisement, upon consideration of the entire record finds that the bonds sued on herein are valid obligations of the district, and that the plaintiffs are entitled to recover against the District for the amount thereof.

The Court further finds that in the proceedings in this court in the cause styled, "In the matter of Chicot County [fol. 15] Drainage District, Bankrupt, No. 4357", this Court never had jurisdiction of the parties plaintiff herein or the subject matter because Act No. 251 of the Seventy-third Congress, approved May 21, 1934, (U. S. C. A. Title 11, Paragraphs 301 to 303, inclusive) was unconstitutional and void, and that the decree of the Court in said cause offered by the defendant district as a defense to this action constitutes no defense and is void.

It is therefore, considered, ordered, and adjudged that the plaintiff, Baxter State Bank, have and recover judgment against the Chicot County Drainage District of Chicot County, Arkansas, in the sum of Fourteen Thousand, Three Hundred Eighty-nine and 80/100 Dollars (\$14,389.80) with costs, and that the plaintiff, Lena S. Shields, have and recover against the Chicot County Drainage District of Chicot County, Arkansas, in the sum of Thirty-nine Hundred Twenty-Three and 15/100 Dollars (\$3,923.15) with costs, said judgments to draw interest at 5½ per cent from date hereof until paid.

Thomas C. Trimble, United States District Judge.

Endorsed: "Filed June 2, 1938. Sid B. Redding, Clerk."

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME FOR FILING BILL OF EXCEPTIONS—
Filed Sept. 1, 1938

On this 1st day of September, 1938, on application of the defendant, Chicot County Drainage District by Owens, Ehrman & McHaney, its attorneys, and for good cause shown, it is ordered that the time for filing the Bill of Exceptions in this cause be and is hereby enlarged and extended to October 1, 1938.

Thomas C. Trimble, United States District Judge.

[File endorsement omitted.]

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted].

Bill of Exceptions—Filed September 27, 1938

Be it remembered that on this the 21st day of January, 1938, this cause coming on to be heard before the Honorable Thomas C. Trimble, Jr., Judge of the court aforesaid sitting as a jury, a stipulation in writing having heretofore been filed waiving trial by jury, the plaintiffs appearing in person and by Mr. Arthur J. Johnson of Star City, Arkansas, and the defendant appearing and being present by Messrs. Owens, Ehrman and McHaney, Mr. E. L. McHaney, Jr., its counsel, and all parties announcing ready for trial, the following proceedings were had:

RILEY BURCHAM, a witness in behalf of the plaintiffs, testified by deposition as follows:

My name is Riley Burcham, and my residence is 243 East Seventeenth Street, Baxter Springs, Kansas. I am assistant cashier of the Baxter State Bank. The Baxter State Bank owns the following bonds of the Chicot County Drainage District of Chicot County, Arkansas:

| Number | Date | Amount | Rate | Due | Amt. Due |
|--------|---------------|------------|------|---------------|-----------|
| 207 | Apr. 15, 1924 | \$1,000.00 | 5½% | Oct. 15, 1936 | \$1283.55 |
| 402 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1941 | 1283.55 |
| 587 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1945 | 1283.55 |
| 588 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1945 | 1283.55 |
| 589 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1945 | 1283.55 |
| 590 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1945 | 1283.55 |
| 591 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1945 | 1283.55 |
| 825 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1949 | 1283.55 |
| 826 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1949 | 1283.55 |
| 827 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1949 | 1283.55 |
| 834 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1949 | 1283.55 |

The bank acquired these bonds on March 12, 1925, by purchase from Brown-Crummer Company of Wichita, Kansas. These bonds are now in the hands of the Clerk of the United States District Court at Little Rock, Arkansas. Interest has been paid on these bonds to October 15, [fol. 17] 1932. The statement heretofore given of the amount due on the bonds includes interest from that date.

On cross-examination the witness testified as follows:

The Baxter State Bank had notice of a suit filed in the United States District Court for the Western Division of the Eastern District of Arkansas by the Chicot County Drainage District, said cause being styled "In the Matter of Chicot County Drainage District, Bankrupt," it being cause No. 4357 in said court, wherein the district petitioned for authority to effect a plan of debt readjustment, said cause being filed on or about the 1st day of June, 1935.

MRS. LENA S. SHIELDS testified in behalf of the plaintiffs by deposition as follows:

My name is Lena S. Shields and residence 623 East Ninth Street, Baxter Springs, Kansas.

I am the owner of the following bonds of Chicot County Drainage District of Chicot County, Arkansas:

| Number | Date | Amount | Rate | Maturity | Amt. Due |
|--------|---------------|------------|------|---------------|------------|
| 197 | Apr. 15, 1924 | \$1,000.00 | 5½% | Oct. 15, 1936 | \$1,283.55 |
| 299 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1939 | 1,283.55 |
| 312 | Apr. 15, 1924 | 1,000.00 | 5½% | Oct. 15, 1929 | 1,283.55 |

I acquired these bonds in March, 1933, through the estate of my deceased husband, Scott D. Cannon. These bonds have been delivered to the Clerk of the United States District Court at Little Rock, Arkansas. The statement of the amount due includes interest from October 15, 1932. Interest had already been paid to that date.

On cross-examination, the witness testified as follows:

I had notice of a suit filed in the United States District Court for the Western Division of the Eastern District of Arkansas, by the Chicot County Drainage District, said cause being styled "In the Matter of Chicot County Drainage District, Bankrupt," it being Cause No. 4357 in said court, wherein said district petitioned for authority to effect a plan of debt readjustment, said cause being filed on or about the 1st day of June, 1935.

[fol. 18] The original bonds numbered 207, 402, 587, 588, 589, 590, 591, 825, 826, 827, 834, 197, 299, and 312, were then introduced into the evidence, after which the plaintiffs rested their case.

The defendant thereupon introduced the following evidence:

"Mr. McHaney: It is hereby stipulated by and between counsel for both parties that Mrs. Lena S. Shields and Mrs. Lena S. Cannon are one and the same person."

Mr. Sid B. Redding was thereupon sworn as a witness and testified on behalf of the defendant as follows:

My name is Sid B. Redding. I am Clerk for the United States District Court for the Eastern District of Arkansas, and was serving in that capacity on and after June 17, 1935. I have charge of all the records filed in said court.

On June 17, 1935, a petition to effect a plan of debt re-adjustment was filed in this court by the Chicot County Drainage District, it being Cause No. 4357 on the docket of said court. (Said petition was thereupon introduced into the evidence as Exhibit No. 1 and is in words and figures as follows:

"EXHIBIT No. 1

In the United States District Court, Western Division of the Eastern District for the State of Arkansas

In the Matter of

Chicot County Drainage District, Bankrupt

No. —

Filed 6-17-35. Sid B. Redding, Clerk

Petition for Authority to Effect a Plan of Debt
Readjustment

Jun. 4, 1935.

Drainage, Levee and Irrigation Division

To the Honorable John E. Martineau, Judge of the District Court of the United States, Western Division of the Eastern District, State of Arkansas:

[fol. 19] Your petitioner, Chicot Drainage District, of the County of Chicot, State of Arkansas, respectfully requests:

1. That the Petitioner is a drainage district, duly organized and existing as a taxing district pursuant to the laws of the State of Arkansas.
- 2: That petitioner is a taxing district within the terms and meaning of an act of the Seventy-third Congress, numbered 251, approved May 21, 1934, constituting an amendment to the General Bankruptcy laws of the United States, acts amendatory thereof and supplementary thereto, especially as same covers and relates to debt readjustment of municipalities and taxing districts.
- 3: That the court named in the caption hereof is the court in whose territorial jurisdiction the Petitioner or the major part thereof is located.
4. That the filing of this petition and commencing of this proceeding has been authorized by proper resolution duly passed and adopted by the Board of Commissioners of the Petitioner on May 20, 1935, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof by reference, and that the fees required by the act of Congress were duly paid by the Petitioner at the time this petition was filed.
5. That Petitioner is insolvent and unable to meet its debts as they mature, and has been insolvent and unable to meet its debts as they have matured for a period of several years last past, and now desires to effect a readjustment of its debts as hereinafter set forth.
6. That for at least five years last past the farming of lands within the Petitioner has been unprofitable on account of the existing agricultural conditions and the general depression, during which time the prevailing market value of the farm products produced within the limits of the Petitioner has been, generally, less than the cost of production, and during which time the installments on said indebtedness, falling due, have been greater than the ability of said lands to produce, or the owners to pay. That by reason thereof the landowners within the limits of the Petitioner have defaulted in the payment of their taxes or tax levies due to the Petitioner. That, by reason of such [fol. 20] defaults and the ever increasing burden of tax delinquencies, the land within the Petitioner have become unmarketable and their value greatly reduced. That the

Petitioner has made due and proper effort to collect its taxes or tax levies sufficient to pay its indebtedness as the same has matured and thereafter, but has been unable so to do, and that, unless some such plan of debt readjustment as is herein set forth be speedily effected, the burden of taxation against the lands in or under the petitioner will be greater than the value of said lands. That many of the owners live upon their lands in the Petitioner and unless they are given the relief herein contemplated their homes will be confiscated and the fruits of many years of toil will be lost.

7. That a statement of the outstanding claims or liabilities of the Petitioner is hereto attached, marked Exhibit 'B' and made a part hereof by reference, and that no part thereof is owned, held, or controlled by the Petitioner.

8. That a list of the known creditors of the Petitioner, together with their addresses as far as known to the Petitioner, and a description of their respective claims, showing separately those who have accepted the plan of readjustment hereinafter mentioned, together with their separate addresses is hereto attached and marked Exhibit 'C' and made a part hereof by reference. That the Petitioner by filing the said list of such creditors does not admit the validity of their claims of debt. That all of the said claims of creditors against the Petitioner are of a single class, namely, claims payable out of the taxes or tax levies against the lands within the limits of the Petitioner imposed according to law.

9. That a plan for the readjustment of the debts of the Petitioner described in said Exhibit 'B' has been proposed, and is filed and submitted with the petition. That said plan of debt readjustment is set forth in the resolution of the board of commissioners, of the Petitioner, a copy of which said resolution is hereto attached and marked Exhibit 'D' and made a part hereof by reference.

10. That creditors of the Petitioner owning not less than 76% in amount of the bonds and contractual evidences [fol. 21] of indebtedness of the Petitioner affected by the plan of readjustment proposed herein, have accepted in writing the filing of this petition and the plan of debt readjustment set forth therein, and that such written acceptance is hereto attached, marked Exhibit 'F' and made a

part hereof by reference. That the Reconstruction Finance Corporation, an agency of the United States of America, has authorized a loan to the Petitioner in the sum of \$191,000 for the purpose of enabling the Petitioner to reduce and refinance its indebtedness, which refinancing is in accord with the plan of debt readjustment of the Petitioner set forth in Exhibit 'D' hereto attached.

11. That the plan of debt readjustment proposed herein contemplates paying, and the Petitioner should be permitted to pay, the reasonable cost of maintaining its system of drainage improvements and for the expenses of operation during the pendency of this proceeding. That no additional expenses are provided for in the carrying out of the plan of debt readjustment herein set forth except the necessary court costs and a reasonable fee to counsel representing Petitioner, such fee to be in such reasonable amount as the court may determine and paid by the Petitioner out of funds on hand.

Wherefore, The Petitioner prays:

(a) That an order be entered approving this petition as properly filed under the act of Congress governing this proceeding and for the giving of notice as therein required; and

(b) That an interlocutory decree be entered making the plan of readjustment proposed herein temporarily operative, if such decree shall appear to be just and proper, and that upon final hearing a final decree be entered putting in full force and effect such plan of readjustment and releasing and discharging the Petitioner from all debts of every nature as contemplated and provided therein; and [fol. 22] (c) That the court grant such further orders, decrees and relief as may be deemed equitable and necessary in the premises.

Chicot County Drainage District, by Charles M. Matthews, Chairman.

Attest: W. H. Moore, Secretary.

Ohmer C. Burnside, Attorney for Petitioner.

STATE OF ARKANSAS:

County of Chicot, ss:

C. M. Matthews, being first duly sworn, on his oath states that he is the duly elected, qualified and acting chairman

of the Board of Commissioners of the Chicot County Drainage District, a taxing district; that he has been duly and regularly authorized by resolution adopted by the Board of Commissioners of said District to prepare, execute and verify the foregoing petition; that he has read the said petition and knows the contents thereof and that the matter and things therein stated are true of his own knowledge.

Chas. M. Matthews.

Subscribed and sworn to before me this 1st day of June, 1935.

Raymond L. Hudson, Notary Public.

My commission expires 12-1-37.

EXHIBIT "A" TO PETITION

Certified Copy of Resolutions of District Authorizing Filing and Prosecution of Suit in United States District Court.

Resolution

Whereas, In view of the decision of this district to attempt a plan of refinancing of its indebtedness, it becomes necessary to institute proceedings in the United States District Court.

[fol. 23] Now, Therefore, Be It Resolved by the Chicot County Drainage District, at a meeting of its commissioners (all of whom were present and voting in the affirmative on the question of the adoption of this resolution) held at its offices, in the Town of Lake Village, Chicot County, Arkansas, on Monday, May 20, 1935, after due and legal notice, that this district, acting by and through C. M. Matthews, its chairman; W. H. Moore, its secretary, and Ohmer C. Burnside, its attorney, file forthwith and prosecute in the United States District Court, Western Division of the Eastern District, State of Arkansas, its petition, having for its object a readjustment of its indebtedness, in conformity with Act 251 of the 73rd Congress, approved May 21, 1934, constituting an amendment to the General Bankruptcy laws of the United States, acts amendatory thereof and supplementary thereto:

STATE OF ARKANSAS:

County of Chicot, ss:

I, W. H. Moore, hereby certify that I am that secretary of the Chicot County Drainage District and, as such official, am the legal custodian of the records of such district, and that the above and foregoing is a true and correct copy of a resolution duly adopted by said Chicot County Drainage District at a meeting of the commissioners thereof, duly and regularly had and held, at its offices in the Town of Lake Village, Chicot County, Arkansas, on May 20, 1935.

Witness my hand, as secretary of the Chicot County Drainage District, this the 1st day of June, 1935.

W. H. Moore, Secretary." (Seal.)

EXHIBIT "B" TO PETITION

Attached to the petition (Exhibit No. 1 above) was a statement of outstanding claims or liabilities of the petitioner, which was marked Exhibit "B". This statement showed that the outstanding liabilities of the district were serial bonds in the total amount of \$762,536.36, all of said bonds being dated April 15, 1924, and bearing interest from date at 5½% per annum, payable semi-annually on April 15 and October 15, and secured by pledge dated April 15, [fol. 24] 1924, recorded in Deed Record Book R-3, page 257, records in the office of the clerk and recorder of Chicot County, Arkansas.

EXHIBIT "C" TO PETITION

Also attached to the said petition (Exhibit No. 1 above) was Exhibit "C", it being a list of known creditors of the petitioner with their addresses, as far as known, and with the description of their respective claims.

Then followed a list of the owners of bonds of the district who had accepted the proposition of settlement offered by the district, together with the addresses of the owners of said bonds. This list showed that the owners of \$581,507.34 in principal amount of said bonds had accepted said proposition of settlement. Then followed a list of

of the Court in the Federal Building in the City of Little Rock, State of Arkansas, on the 22nd day of July, 1935, at 10 o'clock A. M. or as soon thereafter as same may be held, for the purpose of considering the plan of readjustment as set out or referred to in the petition as well as any changes or modifications thereof which may be proposed or decreed necessary or proper, and for the further purpose of hearing any creditors of the district upon any controversial matter in connection with the proposed plan of debt readjustment and the advisability of entering an order confirming same.

The plan of debt readjustment materially affects the holders of all outstanding bonds and other indebtedness of the district as it will, if put into effect, require the holders of such indebtedness to receive in cash approximately 33 per cent on the dollar of their indebtedness.

Creditors of the district are hereby referred to the petition on file in the above entitled cause and to the exhibits attached thereto and the orders of the court for details and particulars of the proposed plan of debt readjustment and of the proceedings taken and to be taken therein.

The proposed plan of debt readjustment has been approved by the district and duly accepted by the holders of more than two-thirds in amount of each class of the indebtedness of said district affected by such plan, and upon the approval or confirmation of the plan of readjustment by the court, the district is empowered and authorized to take such action as is necessary to carry the same into effect.

This the 21st day of June, 1935.

Chicot County Drainage District, By W. H. Moore,
Secretary."

[fol. 38] An order of July 22, 1935, filed in Cause No. 4357, was thereupon introduced in evidence as Exhibit No. 5, and, omitting formal parts, is in words and figures as follows:

"EXHIBIT No. 5

(Order of U. S. District Court as to Filing of Claims, etc.)

Upon this 22nd day of July, 1935, is presented to Honorable John E. Martineau, United States District Judge,

in chambers, in the Federal Building, in Little Rock, Arkansas, in said district, sitting in bankruptcy, the verified petition and exhibits attached thereto of the above styled drainage district, and the proof of publication of the Saint Louis Globe Democrat, of Saint Louis, Missouri, showing that all parties having any interest or claim in this matter are warned to appear on this date at this place and time for the purpose of being heard, and that notices were published in the form, and for the time and in the manner, as heretofore ordered by this court; the affidavit of W. H. Moore, Secretary of said Chicot County Drainage District, showing that all bondholders whose names and addresses are to petitioner known, and appearing in the schedule marked as Exhibit "F" to the original petition, were prior to July 1, 1935, mailed a notice in form as prescribed in the previous order of this court, notifying such bondholders, at their last known address, of the pendency of this litigation and of hearing on this date; and upon consideration of all of which the court makes the following findings of fact, to-wit:

1. That petitioner is a Drainage District, and, as such, is a taxing district of the State of Arkansas, and was organized and issued bonds pursuant to and in full compliance with the Constitution and laws of the State of Arkansas.

2. That said Drainage District comes within the terms of the 73rd Congress, Act No. 251, approved May 24, 1934, and the petition heretofore filed herein was filed pursuant to the provisions of said Act and the Bankruptcy Act of July 1, 1898, as amended, covering Municipal Debt Readjustments.

3. That the officials having power to contract on behalf of said Drainage District and to provide for levying the [fol. 39] special assessments for the purpose of constructing the improvements for which said drainage district was organized are the members constituting its Board of Commissioners and Directors, and said Board now consists of Chas. M. Matthews, Sam Epstein, B. C. Clark, N. W. Bunker and F. H. Dantzler, all of whom are duly qualified and acting as said Board of Commissioners and Directors of said Drainage District, and that the petition and proceedings had hereunder have been authorized by a proper resolu-

bondholders, together with their addresses and the amount of bonds owned by each, which bondholders had not accepted the proposition of settlement offered by the district. The total amount of the bonds the owners of which had not accepted the proposition of settlement was \$181,029.02. Of this amount, the owners of \$20,869.58 were unknown. Included in the list who had not accepted the proposition of settlement were the Baxter State Bank, whose address was shown as Baxter Springs, Kansas, and the amount of bonds owned \$11,000.00, and Mrs. Lena S. Cannon, whose address was shown in care of Sedgwick Furniture Company, Baxter Springs, Kansas, and the amount owned by her \$3,000.00.

Also attached to said petition (Exhibit No. 1 above) was Exhibit "D", which is in words and figures as follows:

EXHIBIT "D" TO PETITION

Certified Copy of Resolution of District Reflecting Plan For Readjustment of Its Debts

Resolution

Whereas, This district, due to poor tax collections, is financially unable to pay its indebtedness, amounting to the sum of \$762,536.36, represented by serial bonds of the district, and, of necessity, must attempt some plan of debt readjustment, and

Whereas, This district has for sometime been negotiating with certain of its largest creditors looking toward a set [fol. 25] tlement of its said indebtedness, such negotiations resulting in the organization of a group of its bondholders in Saint Louis, Missouri, known as the 'Bondholders' Protective Committee of the Chicot County Drainage District,' and

Whereas, Said Bondholders' Protective Committee , after negotiating with the major portion of the bondholders of the district, and acting under written power of attorney from and as agent for approximately 76%, in amount, of the bondholders, has indicated in writing to this district that it has secured the deposit with the Saint Louis Union Trust Company, of Saint Louis, Missouri, as Depository, of bonds in the principal sum of \$781,507.34, being approx-

imately 76% of all outstanding bonds of the district, under the express written agreement that such committee, acting as agent and attorney in fact for owners of bonds, so deposited, and as agent and attorney in fact for owners of bonds which may hereafter be deposited with such depository, under such depository agreement, will accept from this district in full and complete payment of all of said bonds now represented by it and all which may hereafter be represented by it such per centum on the dollar of said bonds as the sum of \$252,500 bears to the total of said outstanding bonds, to-wit: \$762,536.36, or approximately 33%, and

Whereas, This district has proper assurances that it can borrow from the Reconstruction Finance Corporation, of Washington, D. C., the sum of \$191,000.00, and has available the sum of \$61,500 with which to supplement said loan, aggregating the said sum of \$252,500, necessary to meet the requirements of said Bondholders' Protective Committee.

Now, Therefore, Be It Resolved by the Chicot County Drainage District, at a meeting of its commissioners (all of whom were present and voting in the affirmative on the question of the adoption of this resolution) had and held at its offices, in the Town of Lake Village, Chicot County, Arkansas, on Monday, May 20, 1935, after due and legal notice, that this district accept the proposal of the said Bondholders' Protective Committee, to-wit: That this district pay in composition settlement of its said indebtedness [fol. 26] the said sum of \$252,000, such sum to be raised by securing a loan from the Reconstruction Finance Corporation in the sum of \$191,000, under the terms and conditions generally imposed by said corporation, and the payment of the sum of \$61,500, raised by this district from other sources, and that such district take appropriate steps to secure said loan from the Reconstruction Finance Corporation, and that such district forthwith file and prosecute its petition in the United States District Court, Western Division of the Eastern District for the State of Arkansas, under Act 251 of the 73rd Congress, approved May 21, 1934, and acts amendatory thereof and supplementary thereto, looking toward a composition settlement of its said indebtedness under the terms and conditions heretofore set forth, and that this district employ Ohmer C. Burnside, of Lake Village, Arkansas, as our attorney to represent us in the above matters, and that he, as our said at-

torney, and C. M. Matthews, as chairman, and W. H. Moore, as secretary, be and they are hereby authorized, empowered and directed to take appropriate steps to forthwith effectuate the accomplishment of said readjustment plan.

STATE OF ARKANSAS:

County of Chicot, ss:

I, W. H. Moore, hereby certify that I am the secretary of the Chicot County Drainage District and that, as such official, am the legal custodian of the records of said drainage district, and that the above and foregoing is a true and correct copy of a resolution duly and legally adopted by the commissioners of said drainage district, at a meeting had and held at its offices, in the Town of Lake Village, Chicot County, Arkansas, on Monday, May 20, 1935.

Witness my hand, as such secretary of the Chicot County Drainage District, this the 1st day of June, 1935.

W. H. Moore, Secretary."

Attached to the petition (Exhibit No. 1) was Exhibit "F", which is in words and figures as follows:

[fol. 27]

EXHIBIT "F" TO PETITION

Certificate

I, Wm. R. Humphrey, Secretary of the Bondholders' Protective Committee of Chicot County Drainage District, do hereby certify that the following is a true and correct copy of a resolution adopted by the Bondholders' Protective Committee at a meeting held on May 18th, 1935.

Resolution

Whereas, this Committee has been advised that the Reconstruction Finance Corporation has granted a loan of \$191,000 to the Chicot County Drainage District of Chicot County, Arkansas, for the purpose of enabling said District to reduce and refinance its outstanding indebtedness pursuant to provisions of Section 36, Part 4 of the Emergency Farm Mortgage Act of 1933, as amended, which said loan is sufficient to provide for payment of 25.047¢ for each dollar of principal amount of bonds and the interest accrued thereon, and

Whereas, after negotiations with certain landowners in the District, said landowners have agreed to raise the additional sum of \$61,500 to be paid to bondholders in cash in addition to the proceeds of the R. F. C. loan,

Now, Therefore, Be It Resolved that this Bondholders' Protective Committee hereby agrees to accept such settlement, consisting of the Reconstruction Finance Corporation loan of 25.047¢ on the dollar plus the sum of \$61,500 for all bonds of Chicot County Drainage District, Chicot County, Arkansas, now or hereafter under its control, and

Be It Further Resolved that Wm. R. Humphrey, Secretary of this Committee, be and he is hereby authorized to represent this Committee in all matters, including court proceedings, affecting all or any bonds now or hereafter deposited with this committee.

In witness whereof I have hereunto set my hand this 20th day of May, 1935.

Wm. R. Humphrey.

[fol. 28]

May 20, 1935.

Wm. R. Humphrey, Secretary,
Bondholders' Protective Committee,
Chicot County Drainage District,
St. Louis, Mo.

Dear Mr. Humphrey:

It is our understanding that you hold authority to represent the Bondholders' Protective Committee holding certain bonds of the Chicot County Drainage District in all matters, including court proceedings, affecting all or any bonds deposited with this committee.

With this understanding, we hereby submit to you the following offer:

The Chicot County Drainage District will pay 25.047¢ on the dollar of principal amount of all outstanding bonds of this District in full and final settlement of same, contingent upon the consummation of a loan to the District by the Reconstruction Finance Corporation in the sum of \$191,000, and, in addition, the District will cause to be paid to the

holders of all outstanding bonds the sum of \$61,500 cash to be pro rated equally among said bonds.

Kindly advise us whether this offer is acceptable to you.

Very truly yours, Chicot County Drainage District of
Chicot County, Arkansas, by Chas. M. Matthews,
Chairman.

C. M. Matthews, Chairman,
Board of Commissioners,
Chicot County Drainage District.

DEAR MR. MATTHEWS:

Your offer, set out above, to compromise and settle all outstanding bonds of the Chicot County Drainage District on the basis of 25.047¢ on the dollar of principal amount of bonds, plus the sum of \$61,500 to be pro rated equally among said bonds, is hereby accepted on account of all bonds now or hereafter deposited with the Bondholders' [fol. 29] Protective Committee of Chicot County Drainage District.

Very truly yours, Wm. R. Humphrey, Secretary,
Bondholders' Protective Committee."

Thereafter, as part of Exhibit "F", followed a schedule showing bondholders who had agreed to accept the proposed settlement, these holders owning \$581,507.34 of principal amount of said bonds. Thereafter followed a schedule showing bondholders who had not agreed to accept the proposed settlement, these holders owning bonds in the total amount of \$160,159.44, and further showing that there were bonds in the total amount of \$20,869.58 unaccounted for. In the list of bondholders who had not agreed to accept the proposed settlement were included Baxter State Bank of Baxter Springs, Kansas, owning \$11,000.00 of bonds, and Mrs. Lena S. Cannon, c/o Sedgwick Furniture Company, Baxter Springs, Kansas, the owner of \$3,000.00 of bonds. Mr. William R. Humphrey signed an affidavit attached to said schedules, stating that they were true, insofar as could be shown by the records available to him.

There was thereupon introduced as an exhibit to the testimony of Mr. Sid B. Redding Exhibit No. 2, which is in words and figures as follows:

"EXHIBIT No. 2

(Order of U. S. District Court Approving Petition of Chicot County Drainage District for Authority to Readjust and Refinance Its Debts as Properly Filed, Etc.)

**IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION
OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS**

Filed June 20, 1935. Sid B. Redding, U. S. Clerk.

In the Matter of the Application of Chicot County Drainage District, A Municipal Corporation, for an Order Authorizing the Readjustment and Settlement of Its Debts.

No. 4357

This cause coming on this day before me to be heard upon application of the Chicot County Drainage District, [fol. 30] the above named petitioner, for leave to file its petition, schedule and plan for the readjustment of its debts under Section 80, Chapter IX of the National Bankruptcy Act, as amended, and the court having examined the petition and plan of debt readjustment submitted therewith and having heard the oral testimony offered in support thereof, and being fully advised in the premises, finds that the petition and plan of debt readjustment submitted therewith are presented in good faith and for the bona fide purpose of obtaining the relief therein prayed; that creditors of the petitioner holding not less than 76% of its indebtedness affected by the plan have duly accepted it in writing; that the petition and plan are in conformity with Section 80 of Chapter IX of the National Bankruptcy Act, as amended, and it is approved as properly filed.

It Is Therefore Ordered And Adjudged That the petition of the Chicot County Drainage District, a municipal corporation, for authority to readjust and refinance its debts be and the same is hereby approved as properly filed for the purposes therein contained; that the petitioner give by publication notice to its creditors of the filing and approval of the petition, the plan of debt readjustment submitted therewith, and of a formal hearing upon such petition and plan, to be held in the Federal Court Building in the City of Little Rock, and State of Arkansas, on the 22nd day of July, 1935, at 10:00 A. M., and that such no-

tice be published once a week for at least three successive weeks in St. Louis Globe Democrat of St. Louis, Missouri, in the following form:

**IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION
OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS**

In the Matter of the Application of Chicot County Drainage District, a Municipal Corporation, for an Order Authorizing the Readjustment and Settlement of Its Debts.

NOTICE OF HEARING PLAN OF READJUSTMENT

To the Creditors of Chicot County Drainage District:

Notice is hereby given that on the 17th day of June, 1935, the verified petition of Chicot County Drainage District was duly filed in the office of the clerk of the United [fol. 31] States District Court, Western Division of the Eastern District, State of Arkansas, stating, among other things, that the district is insolvent and unable to meet its debts as they mature; and that it desires to effect a plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and refinanced pursuant to the provisions of Section 80, of Chapter IX, of the National Bankruptcy Act, as amended, and praying that the court take such action under the Act mentioned as is necessary to fully effect such debt readjustment. That the petition of the district and the proceedings for debt readjustment as set forth therein was approved by the court as properly filed under the Bankruptcy Act and is now pending therein. That by order of the court duly entered in this cause a hearing will be held in the chambers of the Judge of the court in the Federal Building, in the City of Little Rock, State of Arkansas, on the 22nd day of July, 1935, at 10:00 o'clock A. M. or as soon thereafter as same may be held, for the purpose of considering the plan of readjustment set out or referred to in the petition as well as any changes or modifications thereof which may be proposed or decreed necessary or proper, and for the purpose of hearing any creditor of the district upon any controvertible matter in connection with the proposed plan of debt readjustment and the advisability of entering an order confirming same.

The plan of debt readjustment materially affects the holders of all outstanding bonds and other indebtedness of the district, as it will, if put into effect, require the holders of such indebtedness to receive in cash approximately 33% on the dollar of their indebtedness.

Creditors of the district are hereby referred to the petition on file in the above entitled cause and to the exhibits attached thereto and the orders of the court for details and particulars of the proposed plan of debt readjustment and of the proceedings taken and to be taken therein.

The proposed plan of debt readjustment has been approved by the district and duly accepted by the holders of more than two thirds in the amount of each class of the indebtedness of said district affected by such plan, and upon the approval or confirmation of the plan of readjust- [fol. 32] ment by the court, the district is empowered and authorized to take such action as is necessary to carry the same into effect.

This — day of —, 1935.

Chicot County Drainage District, by — —,
Secretary.

That the secretary of the district mail a copy of such notice to each of the known creditors of petitioner at his last known address; that on or before the date of hearing mentioned in the notice, petitioner shall file with the clerk of this court an affidavit of the publisher showing that the notice was duly published, also an affidavit of the secretary of the district stating that he had duly mailed a copy of the notice to each of the known creditors of petitioner all in accordance with this order.

It Is Further Ordered And Adjudged that at the formal hearing upon the petition held at the time and place set forth in the notice all creditors affected by the plan of debt readjustment may be heard upon the acceptance or rejection of the plan as proposed by the petitioner and may by intervention duly filed in this cause appear and be heard upon any controvertible matter in connection therewith, and the court will at said time determine the merits of the petition, and any and all objections filed thereto, and will fix a reasonable time and manner in which the claims and interests of creditors may be filed; will divide the creditors into classes according to the nature of their respective claims and interests, and cause reasonable notice of

such determinations and of hearings for the consideration of the proposed plans, to be given to creditors.

Ordered and adjudged in chambers at Little Rock, Arkansas, within said district, this the 20th day of June, 1935.

John L. Martineau, Judge."

There was therupon introduced into the evidence as an exhibit to testimony of Mr. Sid B. Redding the affidavit [fol. 33] of W. H. Moore filed on July 17, 1935, it being Exhibit No. 3, which is in words and figures as follows:

"EXHIBIT No. 3

**IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION
OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS**

In the Matter of the Application of Chicot County Drainage District, a Municipal Corporation, for an Order Authorizing the Readjustment and Settlement of Its Debts

No. 4357

Affidavit

I, W. H. Moore, on oath, state that I am and was at the 20th day of June, 1935, the secretary of the Chicot County Drainage District and, as such official, pursuant to the orders of this court duly made and entered on the 20th day of June, 1935, did mail, with full postage to cover, a notice in the exact form as contained in said order, a copy of which notice is hereto attached and made exhibit 'A' hereto, to each and all of the creditors whose names and addresses appear in the schedule marked as Exhibit 'F' to the original petition herein filed, which said Exhibit 'F' contains a list of all known creditors, with their last known address, who have accepted the plan of debt readjustment as set forth in said original petition, and also a list of all known creditors, with their last known address, who have not accepted said plan of debt readjustment.

Witness my hand and seal on this the 1st day of July, 1935.

W. H. Moore.

Subscribed and sworn to before me this 1st day of July, 1935.

Raymond L. Hudson, Notary Public. (Seal.)

My commission expires December 1, 1937.

[fol. 34]

EXHIBIT 'A'

IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION
OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS

In the Matter of the Application of Chicot County Drainage
District, a Municipal Corporation, for an Order Au-
thorizing the Readjustment and Settlement of Its Debts.

Notice of Hearing Plan of Readjustment

To the Creditors of Chicot County Drainage District:

Notice is hereby given, that on the 17th day of June, 1935, the verified petition of Chicot County Drainage District was duly filed in the office of the Clerk of the United States District Court, Western Division of the Eastern District, State of Arkansas, stating, among other things that the district is insolvent and unable to meet its debts as they mature; and that it desires to effect a plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and refinanced pursuant to the provisions of Section 80, Chapter IX, of the National Bankruptcy Act, as amended, and praying that the court take such action under the Act mentioned as is necessary to fully effect such debt readjustment. That the petition of the district and the proceedings for debt readjustment as set forth therein was approved by the court as properly filed under the Bankruptcy Act and is now pending therein. That by order of the court duly entered in this cause a hearing will be held in the Chambers of the Judge of the Court in the Federal Building in the City of Little Rock, State of Arkansas, on the 22nd Day of July, 1935 at 10:00 O'Clock, A. M. or as soon thereafter as same may be held, for the purpose of considering the plan of readjustment as set out or referred to in the petition as well as any changes or modifications thereof which may be proposed or decreed necessary or proper, and for the further purpose of hearing any creditor of the district upon any convertible matter in connection with the proposed plan of debt readjustment and the advisability of entering an order confirming same.

The plan of debt readjustment materially affects the holders of all outstanding bonds and other indebtedness of

[fol. 35] the district, as it will, if put into effect, require the holders of such indebtedness to receive in cash approximately 33 per cent on the dollar of their indebtedness.

Creditors of the district are hereby referred to the petition on file in the above entitled cause and to the exhibits attached thereto and the orders of the Court for details and particulars of the proposed plan of debt readjustment and of the proceedings taken and to be taken therein.

The proposed plan of debt readjustment has been approved by the district and duly accepted by the holders of more than two thirds in amount of each class of the indebtedness of said district affected by such plan, and upon the approval or confirmation of the plan of readjustment by the court, the district is empowered and authorized to take such action as is necessary to carry the same into effect.

This 21st day of June, 1935.

Chicot County Drainage District, By: W. H. Moore,
Secretary.

Mailed to creditors on June 22, 1935.

An affidavit of publication filed on July 22, 1935, was thereupon introduced as Exhibit No. 4 to the testimony of Mr. Redding, and is in words and figures as follows:

"EXHIBIT NO. 4

STATE OF MISSOURI,
City of St. Louis, ss:

Filed 7-22-35.

Sid B. Redding, U. S. Clerk.

Personally appeared before the undersigned (A Notary Public within and for the City of St. Louis) H. C. Ganter, who being duly sworn, deposeth and saith that the annexed advertisement was published in the 'St. Louis Globe Democrat' (printed within the said City and State, the newspaper of which he is one of the publishers) for three (3) [fol. 36] times, the first insertion being on the 25th day of

June and the last insertion on the 9th day of July, 1935
as follows:

1st time—June 25
2nd time—July 2
3rd time—July 9
4th time—
5th time—
6th time—
7th time—
etc.

H. C. Ganter.

Sworn to and subscribed before me, this 9th day of July,
1935.

Edward C. Sepp, Notary Public, City of St. Louis.

My commission expires 10-7-38.

**IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION
OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS**

**In the Matter of the Application of Chicot County Drainage
District, A Municipal Corporation, for an Order Au-
thorizing the Readjustment and Settlement of Its Debts**

Notice of Hearing Plan of Readjustment

To the Creditors of Chicot County Drainage District:

Notice is hereby given that on the 17th day of June, 1935, the verified petition of Chicot County Drainage District was duly filed in the office of the Clerk of the United States District Court, Western Division, of the Eastern District, State of Arkansas, stating, among other things, that the district is insolvent and unable to meet its debts as they mature; and that it desires to effect a plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and refinanced pursuant to the provisions of Section 80, Chapter IX, of the National Bankruptcy Act, as amended, and praying that the court [fol. 37] take such action under the act mentioned as is necessary to fully effect such debt readjustment. That the petition of the district and the proceedings for debt readjustment as set forth therein was approved by the court as properly filed under the Bankruptcy Act and is now pending therein. That by order of the court duly entered in this cause a hearing will be held in the Chambers of the Judge

tion duly passed and adopted by said board of commissioners and directors on May 20, 1935.

4. The court named in the caption herein and having jurisdiction of this cause is the court in whose territorial jurisdiction this taxing district is located, and all fees required by said Act of Congress have been duly paid by said Drainage District.

5. That said Drainage District is insolvent and unable to meet its debts as they mature, and it now desires to effect a plan of readjustment of its debts as set out in said petition.

6. A plan of readjustment of the debts of said Drainage District is filed and submitted with the petition, together with the written acceptance of the said Bondholders' Protective Committee purporting to represent creditors of said Drainage District owning not less than 76% in amount of the bonds, notes and certificates of indebtedness of the said Drainage District affected by the said plan, excluding bonds, notes or certificates of indebtedness owned, held or controlled by the said Drainage District in a fund or otherwise.

7. That the petitioner offers to pay to its creditors such per centum on the dollar as the sum of \$252,500.00 bears to the sum of \$762,536.36, or the approximate sum of 33%, which sum is to be furnished by said drainage district in accordance with the Resolution adopted by the Board of Commissioners thereof, and attached as Exhibit 'D' to said petition, and which provides that said district is to secure a loan from the Reconstruction Finance Corporation of the sum of \$191,000.00; and to raise the additional sum of \$61,500 from other sources.

[fol. 40] Now, Therefore It is Ordered, Adjudged and Decreed:

1. That all claims against the petitioner herein shall be filed with the Special Master hereinafter appointed in this proceeding on or before the 31st day of August, 1935, at five o'clock in the afternoon, which time the court finds to be a reasonable time within which to allow such claims to be filed, and the said Special Master and the petitioner are directed to publish a notice of the action of this court in fixing such time and manner as presenting claims for at least two insertions of such published notice in Saint Louis

Globe Democrat of St. Louis, Missouri, prior to said expiration date, the proof of publication to be submitted in the form of like notices heretofore published in this proceeding. Such claims shall be in writing and in detail, verified by the oath of the claimant or his attorney, or agent, and shall be supported by the written instrument upon which said claim is based, where such claims are based upon such written instruments. No claim filed subsequent to the said date of 31st day of August, 1935, at five o'clock in the afternoon thereof, shall be considered for any purpose in this cause; provided, that all unpaid bonds issued by petitioner and outstanding shall be considered as filed without formal presentation, but such bonds shall be presented before payment is made thereon as contemplated by the plan of readjustment.

2. That further consideration of said plan of readjustment of debts and all matters necessary of determination before confirmation of said plan of readjustment be, and they are hereby, referred for consideration and report to Joe H. Schneider, Esq., as Special Master. The Special Master may, by order, order to show cause, notice or otherwise, fix the place, date and time for all hearings before him, and reasonable notice of such hearings shall be given to parties in interest and creditors by publication or otherwise, as determined by the Special Master. The Special Master's report shall contain findings upon all matters necessary of determination before confirmation of the plan of readjustment of debts, and shall contain recommendation as to confirmation of the plan of readjustment, together with form of order recommended by the Special Master.

[fol. 41] 3. The Special Master may incur reasonable and necessary expenses in these proceedings, and shall be allowed a reasonable compensation for his services, such reasonable compensation to be hereafter determined and allowed by the court.

4. This court retains jurisdiction of this cause for further orders as may be necessary.

At Little Rock, in said district, this 22nd day of July, 1935.

John E. Martineau, U. S. District Judge."

An affidavit of publication filed August 7, 1935, was thereupon introduced as Exhibit No. 6, and is in words and figures as follows:

"EXHIBIT No. 6"

STATE OF MISSOURI,

City of St. Louis, ss:

Filed 8-7-35.

Joe H. Schneider, Referee in Bankruptcy.

Personally appeared before me, the undersigned (a Notary Public within and for the City of St. Louis, H. C. Gonter who being duly sworn, deposeth and saith that annexed advertisement was published in the 'St. Louis Globe-Democrat' (printed within the said City and State, the newspaper of which he is one of the publishers) for two (2) times, the first insertion being on the 25th day of July and the last insertion on the 1st day of August, 1935, as follows:

1st time — July 25

2nd time — August 1

3rd time — — —

4th time — — —

5th time — — —

etc.

H. C. Gonter.

[fol. 42] Sworn to and subscribed before me this 1st day of August, 1935.

Edward Sepp, Notary Public, City of St. Louis.

My commission expires Oct. 7, 1938.

Advertisement

**IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION
OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS**

In the Matter of The Application of Chicot County Drainage District, A Municipal Corporation, For An Order Authorizing the Readjustment and Settlement of Its Debts

No. 4357

Notice

Notice is hereby given that, under and pursuant to an order of the United States District Court, Western Division

of the Eastern District, for the State of Arkansas, sitting at Little Rock, in said State, made and entered in the above entitled cause on Monday, July 22, 1935, all claims against the Chicot County Drainage District shall be filed with Joe H. Schneider, Esq. (whose address is Federal Building, Little Rock, Arkansas) as Special Master in such case, on or before 5 o'clock in the afternoon of August 31, 1935 and such claims shall be in writing and in detail, verified by the oath of the claimant or his attorney, or agent, and shall be supported by the written instrument upon which said claim is based, where such claims are based upon such written instruments, and that no claim filed subsequent to said time will be considered for any purpose in such cause, provided, that all unpaid bonds issued by the Chicot County Drainage District and outstanding shall be considered as filed without formal presentation but that such bonds shall be presented before payment is made thereon [fol. 43] as contemplated by the plan of readjustment set forth in the petition filed in said cause.

Chicot County Drainage District, by W. H. Moore,
Secretary. Joe H. Schneider, Special Master."

The report of the Special Master to whom cause No. 4357 was referred was thereupon introduced as Exhibit No. 7. This report was filed on the 3rd day of September, 1935, and it was stated that the Special Master had held a hearing on the matter on the 22nd day of July, 1935, and made findings as follows:

EXHIBIT NO. 7

1. That the debts of the district consisted of bonds issued and outstanding, together with interest thereon, making a total indebtedness of \$857,832.16.
2. That the taxing district was insolvent and unable to meet its debts.
3. That the plan of readjustment of debts offered by the debtor was fair and equitable and for the best interests of the creditors and did [discriminate] unfairly in favor of any class of creditors.

4. That the plan of readjustment of debts complied with the provisions of Section 80, Sub-division (b) of the Bankruptcy Act of 1898, as amended.

5. That the plan of readjustment of debts had been accepted and approved in writing by bondholders comprising 79.01% of the total amount of bonds, unpaid interest coupons, and accrued interest.

6. That all amounts to be paid by the district for expenses incidental to the readjustment of debts had been fully disclosed and were reasonable.

7. That the offer of the plan and its acceptance were in good faith.

8. That the district was authorized by law upon confirmation of the plan to take all action necessary to carry out the plan.

[fol. 44] The report of the Special Master then made the recommendation that the plan of readjustment of debts be confirmed. Further recommendations unnecessary to set out here were also made.

The order and decree of the court on the report of the Special Master entered on the 3rd day of September, 1935, was thereupon introduced in evidence as Exhibit No. 8, and, omitting formal parts, is in words and figures as follows:

"EXHIBIT No. 8

Order And Decree On Report Of Special Master

This cause came on this day before me to be heard upon report to Joe H. Schneider, Esquire, as Special Master, to whom said cause was referred with directions to consider the plan of readjustment of debts as offered by the debtor, and all matters necessary and pertaining to the readjustment of the indebtedness of the Chicot County Drainage District, together with his recommendations thereon, and the court, being fully advised in the premises, finds that the Special Master has complied with the order of reference herein and made complete report thereof, and the said report should be approved.

The court further finds that the petitioning district is insolvent and unable to meet its debts as they mature, and that the plan of readjustment of debts, as offered by the petitioning district herein, is fair, equitable and for the best interests of its creditors, and does not discriminate unfairly in favor of any class of creditors; that the plan of readjustment of debts complies with the provisions of Section 80, sub-section (b) of the Bankruptcy Act of 1898, as amended, and has been accepted and approved in writing filed in the proceedings by bondholders holding bonds in the principal amount of \$602,507.44, which amount is more than 66 $\frac{2}{3}$ % of the outstanding bonds of said district; that all amounts to be paid by the taxing district for services or expenses incidental to the readjustment have been fully disclosed and are reasonable; that the offer of the plan and its acceptance are in good faith; and that taxing district [fol. 45] is authorized by law, upon confirmation of the plan, to take all action necessary to carry out the plan.

It Is Further Ordered, Adjudged and Decreed that the plan of readjustment of the debts of Chicot County Drainage District be and the same is hereby confirmed.

It Is Further Ordered, Adjudged and Decreed that the petitioner deposit with Joe H. Schneider, Special Master, as the disbursing agent of this court, the sum necessary to pay the holders of outstanding bonds, other than bonds which may be purchased by the Reconstruction Finance Corporation as hereinafter provided, 33.1131 cents on the dollar of the unpaid principal amount thereof, excluding all interest due or to become due, and the holders of said bonds be and they are hereby required to deposit said bonds with all unpaid interest coupons attached with the disbursing agent before payment is made as herein provided. That if said bonds be presented for payment with any unpaid interest coupons missing the disbursing agent shall make a deduction from the amount to be paid on the bonds of an amount equal to the face value of such missing coupons. Such payments to be made on the surrender of the old bonds as provided in the plan of refinancing, and the disbursing agent shall mark such bonds and the coupons thereto attached or accompanying such bonds 'Cancelled'.

That in the event any of the old bonds are not surrendered to the disbursing agent prior to the 1st day of November, 1935, then the proportionate sum to which the holders of such missing bonds may be entitled under the

plan of readjustment and refinancing, shall be paid by the disbursing agent into the registry of this court and thereafter paid by the Registrar to the holders of such bonds in accordance with the provisions of this decree and such further decrees of this court as made in reference to the payment of such bonds, provided however, that any money paid into the registry of this court and not claimed on or before the 1st day of November, 1936, shall be offered by said Registrar to the Reconstruction Finance Corporation in the purchase for the district of any refunding bonds of said district held by it at a price of par and accrued interest and the balance of said amount not so used for the [fol. 46] purchase of refunding bonds as aforesaid be turned over to the district without further order of court.

That during the pendency of these proceedings, the Reconstruction Finance Corporation is hereby permitted to buy and the holders of such old bonds are permitted to sell to it the outstanding bonds of the district upon the following terms and conditions to-wit: The Reconstruction Finance Corporation to pay the sum of 25.047 cents on each dollar of the unpaid principal of the outstanding bonds, nothing on interest, and the disbursing agent to pay 8.0661 cents on the dollar from the funds deposited by the district for such purposes on the outstanding principal of such bonds, paying nothing on interest, and deducting from said amount for missing coupons as provided for payment of the outstanding bonds by the disbursing agent in this decree. That when purchased as provided in this paragraph, the old bonds shall be delivered to the Reconstruction Finance Corporation and held by it as security for the funds furnished by it for such purchase until such time as the district issue and deliver its refunding bonds to said Reconstruction Finance Corporation for an amount equal to the amount of money paid by it in the purchase of such bonds and interest thereon from date of disbursement at four per centum per annum, or pay such interest and deliver bonds for the principal.

It Is Further Ordered, Adjudged And Decreed that in order to provide for incidental expenses and to provide for money necessary to pay for the outstanding bonds of the district as provided by the plan of readjustment aforesaid and the orders of this court, petitioning district is hereby authorized to issue and sell refunding bonds to the Reconstruction Finance Corporation in amounts required

to pay such incidental expenses and to raise the sum equal to 25.047 cents on the dollars of the principal amount of its outstanding bonds not purchased by the Reconstruction Finance Corporation, and to exchange for bonds purchased by Reconstruction Finance Corporation an amount sufficient to repay said Reconstruction Finance Corporation for the money expended by it for the old bonds of the taxing district and that each and all of said refunding bonds issued [fol. 47] by the petitioning district to the said Reconstruction Finance Corporation, as provided herein, are hereby declared to be valid obligations of such taxing district and shall not at any time be affected by the plan of readjustment of debts.

It Is Further Ordered, Adjudged And Decreed that the clerk of this court shall cause to be published in St. Louis Globe Democrat and Chicot Spectator newspapers published in St. Louis, Missouri, and Lake Village, Arkansas for two successive issues, notice to the holders of the outstanding bonds of the district directing every holder thereof to deposit any and all bonds of petitioning district with the disbursing agent, within the time above provided or thereafter with the clerk of this court for payment in accordance with this decree and the plan of readjustment of debts on or before the 1st day of November, 1936, or be forever barred from claiming or asserting as against the said district or any individually owned property therein, or the owners thereof, any claim or lien arising out of said bonds, provided, however, that nothing contained herein shall preclude the Reconstruction Finance Corporation from asserting its rights and claims under the old bonds so purchased by it to the extent or amount so expended in acquiring the same with interest thereon at the rate of four per centum per annum, until said petitioning district shall have delivered to the Reconstruction Finance Corporation its refunding bonds in form satisfactory to said Reconstruction Finance Corporation in the aggregate principal amount equal to the money so expended in acquiring said old bonds.

It Is Further Ordered that the disbursing agent make full and complete report of all receipts and disbursements to this court for confirmation.

That any and all holders of said outstanding bonds of the taxing district be enjoined, pending the entry of said final decree, from attempting the enforcement or collection of any claim, judgment or lien which they may now have

against said district or against any of the lands situated within said taxing district and owned by individuals, either by legal proceedings or otherwise.

[fol. 48] That the costs and expenses of this proceeding, including an allowance to the Special Master, be taxed against the petitioner herein.

Expenses of this proceeding:

| | |
|--------------------------------|----------|
| Clerical, office, postage, etc | \$100.00 |
| Fee to Special Master | 500.00 |
| Total | \$600.00 |

Done, Ordered And Decree in Chambers at Little Rock, Arkansas this 3rd day of September, 1935.

John E. Martineau, Judge.

Exhibit No. 9 was thereupon introduced in evidence which which is in words and figures as follows:

"EXHIBIT NO. 9

State of Missouri,

City of St. Louis, ss:

Filed 9-12-35.

Sid B. Redding, Clerk.

Personally appeared before the undersigned (A Notary Public within and for the City of St. Louis) H. C. Gonter who being duly sworn, deposeth and said that the annexed advertisement was published in the 'St. Louis Globe-Democrat' (printed within the said City and State, the newspaper of which he is one of the publishers) for two (2) times, the first insertion being on the 8th day of September and the last inseftion on the 9th day of September, 1935, as follows:

1st time — Sept. 8th

2nd time — Sept. 9th

3rd time — — —

4th time — — —

5th time — — —

etc.?

H. C. Gonter.

[fol. 49] Sworn to and subscribed before me, this 9th day of September, 1935.

Edward C. Sepp, Notary Public, City of St. Louis.
My commission expires Oct 7, 1938.

Publication

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

In the Matter of Chicot Drainage District, Debtor

In proceedings for a Plan of Readjustment of Debts

No. 4357

Notice to Bondholders

Notice is hereby given that, under and by virtue of that certain order and decree, made and entered by the United States District Court, Eastern District of Arkansas Western Division, in the above entitled matter, on September 3rd, 1935, any and all holders of the outstanding bonds of the Chicot County Drainage District be and they are hereby directed to deposit such bonds with Joe H Schneider, Esquire (Federal Building, Little Rock, Arkansas) prior to November 1, 1935 or thereafter, until November 1, 1936, with the undersigned as Clerk of said Court, for payment in accordance with the terms of such order and the plan of readjustment of debts as set forth in this proceeding, or be forever barred from claiming or asserting as against said district or any individually-owned property therein, or the owners thereof, any claim or lien arising out of said bonds:

Given under my hand and the seal of this court this 5th day of September, 1935.

Sid B. Redding, Clerk, United States District Court,
Little Rock, Arkansas.

[fol. 50] Exhibit No. 10 was thereupon introduced in evidence, which is in words and figures as follows:

EXHIBIT NO. 10

Proof of Publication

A. B. [redacted], being duly sworn, deposes and says that he is editor and proprietor of The Chicot Spectator, a weekly newspaper published at Lake Village, Chicot County, Ar-

kansas, and having a bona fide circulation in said County and state, for a period of one year before the date of the publication of this Notice To Bondholders and that the said Notice a true copy of which is hereto annexed and attached, was published in The Chicot Spectator for two (2) consecutive issues, dated as follows, to-wit:

Sept. 13, 1935; Sept. 20, 1935.

(Signed) A. B. Avery.

Subscribed and sworn to before me this 20th day of September 1935.

Dixon T. Gaines, Clerk. By Irene Turpin, D. C.
(Seal.)

Total—\$6.00 paid

Publication

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

In the matter of Chicot County Drainage District, debtor:

In proceedings for a plan of readjustment of debts

Number 4357

Notice to Bondholders

Notice is hereby given that, under and by virtue of that certain order and decree, made and entered by the United States District Court, Eastern District of Arkansas, Western Division, in the above entitled matter, on September 3rd, 1935, any and all holders of the outstanding bonds of the Chicot County Drainage District be and they are here [fol. 51] by directed to deposit such bonds with Joe H. Schneider, Esquire, (Federal Building, Little Rock, Arkansas) prior to November 1, 1935 or thereafter, until November 1, 1936, with the undersigned, as Clerk of said court, for payment in accordance with the terms of such order and the plan of readjustment of debts as set forth in this proceeding, or be forever barred from claiming or asserting as against said district or any individually owned property therein, or the owners thereof, any claim or lien arising out of said bonds.

Given under my hand and the seal of said court, this 5th day of September, 1935.

Sid B. Bedding, Clerk, United States District Court,
Little Rock, Arkansas. (Seal.)

O. C. Burnside, Atty. for Petition.
September 13-20"

Exhibit No. 12, being a supplemental decree of the United States District Court entered on the 5th day of February, 1936, was thereupon introduced in evidence and, omitting formal parts, is in words and figures as follows:

EXHIBIT NO. 12

Supplemental Decree

This cause came on this day before me to be heard on application of the petitioning district for a supplemental decree permitting it to pay each of its bondholders semi-annual interest due April 15, 1933, amounting to \$27.50 on each \$1000 bond, and \$7.97 interest on the unpaid balance of \$289.86 on bonds which matured on October 15, 1932; in addition to the sum of 33.1131¢ on the dollar of the principal amount of its outstanding indebtedness as provided in the decree of this court, dated the 3rd day of September, 1935, and the court finds that it was the intention of the district to pay its outstanding bondholders the sum of 33.1131¢ on the dollar of the principal amount of its outstanding bonds and in addition thereto to pay interest as aforesaid; that, in fact, the district has paid interest as aforesaid on the bonds purchased by the Reconstruction Fi-[fol. 52] nance Corporation, and not deposited in court, and, through inadvertence in the entry of the decree, provision for the payment of such interest on the remainder of said bonds was not provided for and that the plan of debt readjustment should be modified and the decree should be amended to permit such interest payments to be made.

It Is Therefore Ordered, Adjudged and Decreed that the decree entered herein on the 3rd day of September, 1935, providing for the payment of the sum of 33.1131¢ on the dollar of the principal sum of the outstanding bonds of the district, be and the same is hereby amended to include an additional payment of \$27.50 for each appurtenant coupon maturing April 15, 1933, or the payment of

\$7.97 as interest on each bond showing \$289.86 as unpaid principal, and that the plan of debt readjustment be and the same is hereby accordingly modified; that the district is hereby directed to deposit with the clerk of this court the sum of \$1579.86, an amount sufficient to pay the interest as aforesaid, and that such clerk be and he is hereby directed to pay the interest as aforesaid, less his fee for disbursing same, and, upon such payment, shall cancel such appurtenant coupons maturing April 15, 1933, and shall make appropriate endorsement showing such interest payment of \$7.97 on each of the bonds having an unpaid balance of \$289.86, as the case may be, and deliver same to the district as provided in the former decree.

Done, Ordered and Decreed at Chambers, in the City of Little Rock, Arkansas, this 5th day of February, 1936.

John E. Martineau, Judge.

The final report of Joe H. Schneider, Special Master and Disbursing Agent, filed with the Clerk of the Court on the 21st day of February, 1936, was thereupon introduced as Exhibit No. 13. Said report stated that pursuant to the decree of the court on September 3, 1935, the Reconstruction Finance Corporation purchased bonds of the district in the amount of \$705,087.06 on November 26, 1935, which bonds were on said date cancelled and delivered to the district. That there remained outstanding old bonds of the district in the amount of \$57,449.30. That the Chicot County [fol. 53] Drainage District has deposited with Sid B. Redding as registrar the sum of \$19,023.24, it being an amount sufficient to pay 33.1131¢ on the dollar of the unpaid principal amount of said outstanding bonds, and that it had also deposited with the registrar the sum of \$1,579.86 with which to pay interest on said bonds as provided in the supplemental order of the court entered on the 5th day of February, 1936. That the district had issued, sold, and delivered to the Reconstruction Finance Corporation its 4% refunding bonds in the principal sum of \$193,500.00, all dated July 1, 1935, and that all fees and expenses as master and disbursing agent had been paid.

Exhibit No. 14, it being the final decree of the United States District Court in Cause No. 4357, entered on the

28th day of March, 1936, was thereupon introduced in evidence, and, omitting formal parts, is in words and figures as follows:

EXHIBIT No. 14

Final Decree

This cause came on before me this day to be heard upon the application of petitioning district for an order finally discharging it from all liability for and decreeing the cancellation and annulment of its outstanding old obligations affected by and refinanced pursuant to its plan of debt readjustment heretofore approved by this Court, and upon the written report filed with the Clerk of this Court by Joe H. Schneider, the Disbursing Agent heretofore appointed in this cause, and the Court having seen and examined the application and report and the evidence offered in support thereof, and being fully advised in the premises, finds:

- (1) That the petition for debt readjustment filed in this cause by the petitioning district and the acceptance and aproval thereof by holders of more than thirty per centum (30%) of each class of its outstanding indebtedness were, in all things, in compliance with law and have been duly approved by this Court; and
- (2) That the plan of debt readjustment as set forth in the petition filed in this cause was duly accepted and approved by the holders of more than sixty-six and two-thirds per [fol. 54] centum (66 $\frac{2}{3}$ %) of each class of its outstanding indebtedness affected thereby, was proposed and accepted in good faith, is fair, equitable and just, and does not discriminate unfairly in favor of any class of creditors, and has been duly approved by this Court; and
- (3) That in order to raise the funds with which to fully consummate its plan of debt readjustment, the petitioning district, with the approval of this Court, has issued and sold its new serial bonds to the Reconstruction Finance Corporation, an agency of the United States Government, in the principal sum of \$193,500.00, all dated July 1, 1935, bearing interest from date until paid at the rate of four percentum (4%) per annum, payable semi-annually, and evidenced by interest coupons thereto attached, the num-

bers, principal amount and maturity dates thereof being as follows:

| No. of Bonds | Denomination | Amount | Maturity |
|-------------------|--------------|---------------------|--------------|
| 1 to 3, incl. | \$1000.00 | \$3000.00 | July 1, 1939 |
| 4 | 500.00 | 500.00 | July 1, 1939 |
| 5 to 7, incl. | 1000.00 | 3000.00 | July 1, 1940 |
| 8 | 500.00 | 500.00 | July 1, 1940 |
| 9 to 11, incl. | 1000.00 | 3000.00 | July 1, 1941 |
| 12 | 500.00 | 500.00 | July 1, 1941 |
| 13 to 16, incl. | 1000.00 | 4000.00 | July 1, 1942 |
| 17 to 20, incl. | 1000.00 | 4000.00 | July 1, 1943 |
| 21 to 24, incl. | 1000.00 | 4000.00 | July 1, 1944 |
| 25 to 28, incl. | 1000.00 | 4000.00 | July 1, 1945 |
| 29 | 500.00 | 500.00 | July 1, 1945 |
| 30 to 33, incl. | 1000.00 | 4000.00 | July 1, 1945 |
| 34 | 500.00 | 500.00 | July 1, 1946 |
| 35 to 38, incl. | 1000.00 | 4000.00 | July 1, 1947 |
| 39 | 500.00 | 500.00 | July 1, 1947 |
| 40 to 44, incl. | 1000.00 | 5000.00 | July 1, 1948 |
| 45 to 49, incl. | 1000.00 | 5000.00 | July 1, 1949 |
| 50 to 54, incl. | 1000.00 | 5000.00 | July 1, 1950 |
| 55 | 500.00 | 500.00 | July 1, 1950 |
| 56 to 60, incl. | 1000.00 | 5000.00 | July 1, 1951 |
| 61 | 500.00 | 500.00 | July 1, 1951 |
| 62 to 67, incl. | 1000.00 | 6000.00 | July 1, 1952 |
| 68 to 73, incl. | 1000.00 | 6000.00 | July 1, 1953 |
| 74 to 79, incl. | 1000.00 | 6000.00 | July 1, 1954 |
| 80 | 500.00 | 500.00 | July 1, 1954 |
| 81 to 86, incl. | 1000.00 | 6000.00 | July 1, 1955 |
| 87 | 500.00 | 500.00 | July 1, 1955 |
| 88 to 93, incl. | 1000.00 | 6000.00 | July 1, 1956 |
| 94 | 500.00 | 500.00 | July 1, 1956 |
| 95 to 101, incl. | 1000.00 | 7000.00 | July 1, 1957 |
| [fol. 55] | | | |
| 102 to 108, incl. | 1000.00 | 7000.00 | July 1, 1958 |
| 109 | 500.00 | 500.00 | July 1, 1958 |
| 110 to 116, incl. | 1000.00 | 7000.00 | July 1, 1959 |
| 117 | 500.00 | 500.00 | July 1, 1959 |
| 118 to 125, incl. | 1000.00 | 8000.00 | July 1, 1960 |
| 126 to 133, incl. | 1000.00 | 9000.00 | July 1, 1961 |
| 134 to 141, incl. | 1000.00 | 8000.00 | July 1, 1962 |
| 142 | 500.00 | 500.00 | July 1, 1962 |
| 143 to 151, incl. | 1000.00 | 9000.00 | July 1, 1963 |
| 152 to 160, incl. | 1000.00 | 9000.00 | July 1, 1964 |
| 161 to 169, incl. | 1000.00 | 9000.00 | July 1, 1965 |
| 170 | 500.00 | 500.00 | July 1, 1965 |
| 171 to 180, incl. | 1000.00 | 10,000.00 | July 1, 1966 |
| 181 to 190, incl. | 1000.00 | 10,000.00 | July 1, 1967 |
| 191 | 500.00 | 500.00 | July 1, 1967 |
| 192 to 201, incl. | 1000.00 | 10,000.00 | July 1, 1968 |
| 202 | 500.00 | 500.00 | July 1, 1968 |
| | | \$193,500.00 | |

And that so far as these proceedings are concerned, the new bonds are valid and enforceable obligations of the petitioning district; and

(4) That prior to the issuance and sale of the new bonds mentioned last above, the Reconstruction Finance Corporation, with the approval of this Court and in accordance

with the plan of debt readjustment, has purchased certain of the outstanding old obligations of the petitioning district, to-wit; bonds of the district in the sum of \$705,087.06, which were later cancelled and delivered to the petitioning district in exchange for its new bonds equal to the amount paid for the old bonds or obligations so purchased, plus four per centum (4%) interest thereon to the date of exchange, and

(5) That from the proceeds received by the petitioning district from the sale of its new bonds to the Reconstruction Finance Corporation, and funds contributed by the petitioning district, the sum of \$20,603.10 was turned over to the Honorable Sid B. Redding, Clerk of this Court, as Registrar; and that the Disbursing Agent has filed in this cause his written report fully showing that the Reconstruction Finance Corporation purchased all of the old bonds of the district, other than the sum of \$57,449.30 which have not been made available for refinancing as directed by the plan of readjustment and the decree of this court, and a [fol. 56] detailed statement of such outstanding obligations is attached thereto; that as none of the outstanding bonds were deposited with him for retirement as directed by the decree, the sum necessary to pay the holders thereof the amounts found to be due, under the plan and decrees of this court, to-wit, the sum of \$20,603.10 was deposited with the Honorable Sid B. Redding, Clerk of this Court, for disbursement as provided in the decree and supplemental decree entered February 5, 1936, and the report should be approved and the Disbursing Agent discharged from further duties and liabilities as such; and

(6) That all costs, expenses, fees and other charges properly chargeable to the petitioning district in this cause, have been duly approved and paid.

It Is Therefore Ordered, Adjudged and Decreed as follows:

(a) That the official acts of Joe H. Schneider, Disbursing Agent, as set forth and certified to in his report filed in this cause, be and the same are hereby approved and confirmed, and that his duties as Disbursing Agent be terminated and his liabilities thereunder be forever discharged; and

(b) That the sum of \$20,603.10 paid into the registry of this Court, be disbursed by the Registrar for the pur-

pose of taking up and retiring and refinancing, in accordance with the plan of debt readjustment approved in this cause, such remaining outstanding old obligations of the petitioning district as are affected by the plan of debt readjustment, and which may be presented to the Registrar for that purpose within the period of one year from the date hereof; that all such obligations so presented and paid for, be forthwith cancelled and returned to the petitioning district by the Registrar; that all such outstanding old obligations of the petitioning district which are not so presented to the Registrar within one year from the date hereof shall thereafter be forever barred from participating in the plan of debt readjustment or in the funds held in the Registry of this Court; that upon the expiration of the period of one year from the date hereof, the Clerk of this Court shall forthwith notify the Recon-[fol. 57] struction Finance Corporation, by registered letter addressed to it at Washington, D. C. of the amount of funds then remaining in the registry of the Court, and that the same are available for the purchase of new bonds of the petitioning district then held by the Reconstruction Finance Corporation, at par and accrued interest; that any new bonds so purchased shall be forthwith cancelled and returned to the petitioning district by the Registrar; that any part of such funds which are not used for such purpose within sixty days after the date of the mailing of such notice, shall thereupon be paid by the Registrar of this Court to and used solely by the petitioning district in the payment of its new bonds and interest thereon; and

(c) That all the old bonds and other obligations of the petitioning district affected by the plan of debt readjustment approved in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioning district, except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof; and

(d) That the new or refunding bonds issued and sold by the petitioning district to the Reconstruction Finance Corporation and the collection of the principal and interest

thereon, shall not in any wise be adversely affected by these proceedings, or by any order, judgment or decree entered or rendered in this cause; and

(e) That all proceedings necessary for fully effecting the plan of debt readjustment contemplated by this action, except the ministerial duties of the Registrar of this Court as provided herein, have been done and performed in accordance with law, and that all and singular the orders, judgments and decrees heretofore entered and rendered in this cause, be and the same are hereby ratified and confirmed.

[fol. 58] Done at Little Rock, Ark., on this the 28 day of March, 1936.

John E. Martineau, Judge."

LOUISE ALLEN, a witness on behalf of the defendant, testified as follows:

I am a deputy clerk in the office of the United States District Clerk at Little Rock, Arkansas, and as such deputy I have charge of the funds deposited in the registry of the clerk's office. There was deposited in that office the sum of \$20,603.10 to the account of Chicot County Drainage District for payment of bonds issued by said district and dated April 15, 1924. The clerk's office was instructed to make disbursements of this money under the court order signed by Judge Martineau on March 28, 1936. \$44,000.00 of bonds have been surrendered to the clerk's office for payment in accordance with that order. We have paid every bond that was tendered.

W. H. MOORE, a witness on behalf of the defendant, testified as follows:

I am secretary of the Chicot County Drainage District and have been secretary since 1932, I believe. I was acting in that capacity during all of the time during which the proceedings for readjustment of the indebtedness of the district were carried on in this court in 1935 and 1936. In accordance with the orders of the District Court during the refunding proceedings, I mailed notices to all of the

bondholders whose addresses were known at the time the petition was filed in June, 1935. This notice was mailed on June 22, 1935. (A copy of said notice was thereupon introduced as Exhibit No. 15 and is in words and figures as follows:)

"EXHIBIT NO. 15

**IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION
OF THE EASTERN DISTRICT, FOR THE STATE OF ARKANSAS**

In the Matter of the Application of Chicot County Drainage District, a Municipal Corporation, for an Order Authorizing the Readjustment and Settlement of its Debts.

[fol. 59] Notice of Hearing Plan of Readjustment

To the Creditors of Chicot County Drainage District:

Notice is Hereby Given, that on the 17th day of June, 1935, the verified petition of Chicot County Drainage District was duly filed in the office of the clerk of the United States District Court, Western Division of the Eastern District, State of Arkansas, stating, among other things, that the district is insolvent and unable to meet its debts as they mature; and that it desires to effect a plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and refinanced pursuant to the provisions of Section 80, of Chapter IX, of the National Bankruptcy Act, as amended, and praying that the court take such action under the Act mentioned as is necessary to fully effect such debt readjustment. That the petition of the district and the proceedings for debt readjustment as set forth therein was approved by the court as properly filed under the Bankruptcy Act and is now pending therein. That by order of the court duly entered in this cause a hearing will be held in the chambers of the Judge of the Court in the Federal Building in the City of Little Rock, State of Arkansas, on the 22nd day of July, 1935, at 10:00 o'clock, A. M., or as soon thereafter as same may be held, for the purpose of considering the plan of readjustment as set out or referred to in the petition as well as any changes or modifications thereof which may be proposed or decreed necessary or proper, and for the further purpose of hearing any creditor of the district upon any controvertible matter in connection with the proposed plan of

debt readjustment and the advisability of entering an order confirming same.

The plan of debt readjustment materially affects the holders of all outstanding bonds and other indebtedness of the district, as it will, if put into effect, require the holders of such indebtedness to receive in cash approximately 33 per cent on the dollar of their indebtedness.

Creditors of the district are hereby referred to the petition on file in the above entitled cause and to the exhibits attached thereto and the orders of the court for details and particulars of the proposed plan of debt readjustment [fol. 60] and of the proceedings taken and to be taken therein.

The proposed plan of debt readjustment has been approved by the district and duly accepted by the holders of more than two thirds in amount of each class of the indebtedness of said district affected by such plan, and upon the approval or confirmation of the plan of readjustment by the court, the district is empowered and authorized to take such action as is necessary to carry the same into effect.

This 21st day of June, 1935.

"Chicot County Drainage District, By
Secretary."

I mailed a copy of this notice to the Baxter State Bank and I also mailed a copy of this notice to Mrs. Lena S. Cannon. These notices were mailed on June 22, 1935.

I am the county clerk of Chicot County, Arkansas, and as such I have custody of the papers filed in the County Court. I have here an order of the County Court dated November 11, 1935, fixing a tax levy in Chicot County Drainage District and approving the refinancing of the indebtedness. (Thereupon was introduced as Exhibit No. 16 a certified copy of the order of the County Court of Chicot County above referred to, which is in words and figures as follows:)

"EXHIBIT NO. 16

In the Matter of Chicot County Drainage District of Chicot County, Arkansas

Now, on this 11 day of November, 1935, this matter coming on to be heard upon the application of the Commiss-

sioners of Chicot County Drainage District of Chicot County, Arkansas, appearing by their attorney, Ohmer C. Burnside, and the Court being fully advised in the premises and upon the evidence presented finds:

That, by resolution of the 11th day of January, 1934, Reconstruction Finance Corporation authorized a loan [fol. 61] in the total sum of not to exceed \$193,500 to or for the benefit of the District, for the purpose of enabling the District to reduce and refinance its outstanding indebtedness.

That, in order to reduce and refinance its outstanding indebtedness, it will be necessary for the District to issue refunding bonds in the total principal amount of One Hundred Ninety-three Thousand Five Hundred Dollars (\$193,500.00).

That the total assessment of benefits upon the real property, including lands, railroads and tramroads within said district, amount in the aggregate to the sum of \$2,095,304.29.

That, by agreement with Reconstruction Finance Corporation and in consideration of the loan to the District, the District has agreed that, in addition to the collection annually of sums sufficient to service the bonds and provide for the adequate maintenance and operation of the District's project, it will collect amounts sufficient to set up during the five years of this loan, and thereafter maintain, a reserve equal to the amount of the annual installment of principal and interest due on the refunding bonds during the sixth year.

That in order to service the loan, it will be necessary that an order be entered providing that there shall be collected from the assessment of benefits heretofore levied upon the real property, including lands, railroads and tramroads within said District, and declared to be benefited by such improvements, a tax, which, together with ten per centum (10%) for unforeseen contingencies, will amount to the sum of Two Hundred Twelve Thousand Eight Hundred Fifty Dollars (\$212,850.00) plus, in addition thereto, such further sums as shall be required from time to time by reason of the failure of any of the landowners in said District to pay said assessments as and when the same fall due, with interest on such sums at the rate of six per centum (6%), and such further amounts as shall be required to provide for the adequate maintenance and operation of the District's project.

That said tax should be divided, as required by law, into annual installments and that there should be collected [fol. 62] in each of the years 1935 to 1967, inclusive, a tax of one and one-half per cent (1½%) of the assessed benefits for the purpose of paying the principal and interest of said refunding bonds and building up the reserve aforesaid, and a further tax of one-half of one per centum per annum for maintenance and expenses; said collections to be credited first upon the interest accruing upon said levy and said levy to be in lieu of all previous levies for the respective years. The total levy for each of the years 1935 to 1967, inclusive, should be carried on the tax books as a levy of two per centum per annum; all to be applied as above set forth.

That the Commissioners of said District should be authorized and ordered to secure said refunding bonds by a pledge and mortgage of the revenues of said District.

It is, therefore, considered, ordered and adjudged that the Commissioners of Chicot County Drainage District of Chicot County, Arkansas, be and are hereby authorized and ordered to issue refunding bonds of the District in the total sum of One Hundred Ninety-three Thousand Five Hundred Dollars (\$193,500.00) and to secure the same by a pledge and mortgage of the revenues of the District, said bonds to be dated as of July 1, 1935, and to bear interest at the rate of four per centum (4%) per annum, payable semi-annually on the first day of January and July in each year, the principal of said bonds to mature as follows:

| No. of Bonds | Denomination | Amount | Maturity |
|-----------------|--------------|-----------|--------------|
| 1 to 3, incl. | \$1000.00 | \$3000.00 | July 1, 1939 |
| 4 | 500.00 | 500.00 | July 1, 1939 |
| 5 to 7, incl. | 1000.00 | 3000.00 | July 1, 1940 |
| 8 | 500.00 | 500.00 | July 1, 1940 |
| 9 to 11, incl. | 1000.00 | 3000.00 | July 1, 1941 |
| 12 | 500.00 | 500.00 | July 1, 1941 |
| 13 to 16, incl. | 1000.00 | 4000.06 | July 1, 1942 |
| 17 to 20, incl. | 1000.00 | 4000.00 | July 1, 1943 |
| 21 to 24, incl. | 1000.00 | 4000.00 | July 1, 1944 |
| 24 to 28, incl. | 1000.00 | 4000.00 | July 1, 1945 |
| 29 | 500.00 | 500.00 | July 1, 1945 |
| 30 to 33, incl. | 1000.00 | 4000.00 | July 1, 1946 |
| 34 | 500.00 | 500.00 | July 1, 1946 |
| 35 to 38, incl. | 1000.00 | 4000.00 | July 1, 1947 |
| 39 | 500.00 | 500.00 | July 1, 1947 |
| 40 to 44, incl. | 1000.00 | 5000.00 | July 1, 1948 |
| 45 to 49, incl. | 1000.00 | 5000.00 | July 1, 1949 |
| [fol. 63] | | | |
| 50 to 54, incl. | 1000.00 | 5000.00 | July 1, 1950 |
| 55 | 500.00 | 500.00 | July 1, 1950 |
| 56 to 60, incl. | 1000.00 | 5000.00 | July 1, 1951 |
| 61 | 500.00 | 500.00 | July 1, 1951 |
| 62 to 67, incl. | 1000.00 | 5000.00 | July 1, 1952 |

| No. of Bonds | Denomination | Amount | Maturity |
|-------------------|--------------|-----------|--------------|
| 68 to 73, incl. | \$1000.00 | \$6000.00 | July 1, 1953 |
| 74 to 79, incl. | 1000.00 | 6000.00 | July 1, 1954 |
| 80 | 500.00 | 500.00 | July 1, 1954 |
| 81 to 86, incl. | 1000.00 | 6000.00 | July 1, 1955 |
| 87 | 500.00 | 500.00 | July 1, 1955 |
| 88 to 93, incl. | 1000.00 | 6000.00 | July 1, 1956 |
| 94 | 500.00 | 500.00 | July 1, 1956 |
| 95 to 101, incl. | 1000.00 | 7000.00 | July 1, 1957 |
| 102 to 108, incl. | 1000.00 | 7000.00 | July 1, 1958 |
| 109 | 500.00 | 500.00 | July 1, 1958 |
| 110 to 116, incl. | 1000.00 | 7000.00 | July 1, 1959 |
| 117 | 500.00 | 500.00 | July 1, 1959 |
| 118 to 125, incl. | 1000.00 | 8000.00 | July 1, 1960 |
| 126 to 135, incl. | 1000.00 | 8000.00 | July 1, 1961 |
| 134 to 141, incl. | 1000.00 | 8000.00 | July 1, 1962 |
| 142 | 500.00 | 500.00 | July 1, 1962 |
| 143 to 151, incl. | 1000.00 | 9000.00 | July 1, 1963 |
| 152 to 160, incl. | 1000.00 | 9000.00 | July 1, 1964 |
| 161 to 169, incl. | 1000.00 | 9000.00 | July 1, 1965 |
| 170 | 500.00 | 500.00 | July 1, 1965 |
| 171 to 180, incl. | 1000.00 | 10,000.00 | July 1, 1966 |
| 181 to 190, incl. | 1000.00 | 10,000.00 | July 1, 1967 |
| 191 | 500.00 | 500.00 | July 1, 1967 |
| 192 to 201, incl. | 1000.00 | 10,000.00 | July 1, 1968 |
| 202 | 500.00 | 500.00 | July 1, 1968 |

\$193,500.00

It is further considered, ordered and adjudged that there be collected from the assessments of benefits upon the real property, including lands, railroads and tramroads within said District, and declared to be benefited by the District's improvements, for the purpose of servicing said bonds, an amount which together with ten per centum (10%) for unforeseen contingencies, will amount to the total sum of Two Hundred Twelve Thousand Eight Hundred Fifty Dollars (\$212,850.00), plus such further sums as shall be required from time to time by reason of the failure of any of the landowners in said District to pay said assessments as and when the same fall due, with interest on such sums at the rate of six per centum (6%) per annum, and such further amounts as shall be required to provide for the adequate maintenance and operation of the District's project.

[fol. 64] It is further considered, ordered and adjudged that said tax be divided, as is required by law, into annual installments and that there be collected in each of the years 1935 to 1967, inclusive, a tax of one and one-half per cent (1½%) of the assessed benefits for the purpose of paying the principal and interest of said refunding bonds and building up the reserve aforesaid, and a further tax of one-half of one per centum per annum for maintenance and expenses. The said tax shall be paid by the real property in the District, including lands, railroads and tram roads in

said District, in proportion to the amount of the assessments of benefits thereon.

It is further considered, ordered and adjudged that the said tax hereinbefore assessed shall be collected at the rate of Two per centum (2%) for each of the years 1935 to 1967, inclusive; said collections to be credited first upon the first accruing upon said levy, and said levy to be in lieu of all previous levies for the respective years.

It is further considered, ordered and adjudged that to meet the interest upon the said bonds and to pay the principal thereof as it matures, there is hereby appropriated for that purpose and set aside out of the first moneys received from the collection of each installment of the said tax assessed against the real property, including lands, railroads and tramroads within the said drainage district, a sum sufficient to pay the interest and principal of the bond issue maturing the year in which that installment of said tax is due and payable in accordance with and as shown in the schedule hereinbefore set out, and also to build up the reserve provided for in the agreement between said District and Reconstruction Finance Corporation.

It is further considered, ordered and adjudged that no part of the funds arising from the collection of the two per centum in 1935 to 1967, inclusive, of said assessment of benefits in each year shall be applied or used for any purpose save the payment of principal and interest of the refunding bonds herein provided for and the building up of said reserve.

If the tax herein levied should prove insufficient to pay the refunding bonds hereinbefore referred to and the interest thereon as they mature, and also to build up the re-[fol. 65] serve required by the agreement between said District and Reconstruction Finance Corporation, then this Court pledges itself to make such additional levies of taxes against the said assessments of benefits as may be necessary for the purposes aforesaid.

This order shall supersede all previous orders levying a tax upon the lands, railroads and tramroads in said District.

— — —, County Judge of Chicot County, Arkansas.

STATE OF ARKANSAS,

County of Chicot, ss.:

I, Henry Moore, County Clerk of Chicot County, do hereby certify that the above and foregoing is a true and cor-

rect copy of the order filed in my office, at Lake Village, Arkansas.

Witness my hand and official seal this 19th day of January, 1938.

Henry Moore, County Clerk, (Seal.)"

Without objection, a certified copy of the pledge and mortgage securing the bond issue of July 1, 1935, was thereupon introduced as Exhibit No. 17, and is in words and figures as follows:

"EXHIBIT No. 17

Chicot County, Drainage District

To) Pledge

Union Planters National Bank & Trust Company of Memphis, Tennessee, as Trustee

Know all men by these presents:

That for the purpose of refunding the outstanding bonds of Chicot County Drainage District of Chicot County, in the State of Arkansas, there be issued a series of Refunding Bonds dated as of July 1, 1935, bearing interest at the [fol. 66] rate of (4%) four per centum per annum payable semi-annually on the first day of January and July of the respective years, said bonds maturing as follows:

| No. of Bonds | Denomination | Amount | Maturity |
|-----------------|--------------|-----------|--------------|
| 1 to 3, incl. | \$1000.00 | \$3000.00 | July 1, 1939 |
| 4 | 500.00 | 500.00 | July 1, 1939 |
| 5 to 7, incl. | 1000.00 | 3000.00 | July 1, 1940 |
| 8 | 500.00 | 500.00 | July 1, 1940 |
| 9 to 11, incl. | 1000.00 | 3000.00 | July 1, 1941 |
| 12 | 500.00 | 500.00 | July 1, 1941 |
| 13 to 16, incl. | 1000.00 | 4000.00 | July 1, 1942 |
| 17 to 20, incl. | 1000.00 | 4000.00 | July 1, 1943 |
| 21 to 24, incl. | 1000.00 | 4000.00 | July 1, 1944 |
| 25 to 28, incl. | 1000.00 | 4000.00 | July 1, 1945 |
| 29 | 500.00 | 500.00 | July 1, 1945 |
| 30 to 33, incl. | 1000.00 | 4000.00 | July 1, 1946 |
| 34 | 500.00 | 500.00 | July 1, 1946 |
| 35 to 38, incl. | 1000.00 | 4000.00 | July 1, 1947 |
| 39 | 500.00 | 500.00 | July 1, 1947 |
| 40 to 44, incl. | 1000.00 | 5000.00 | July 1, 1948 |
| 45 to 49, incl. | 1000.00 | 5000.00 | July 1, 1949 |
| 50 to 54, incl. | 1000.00 | 5000.00 | July 1, 1950 |
| 55 | 500.00 | 500.00 | July 1, 1950 |
| 56 to 60, incl. | 1000.00 | 5000.00 | July 1, 1951 |
| 61 | 500.00 | 500.00 | July 1, 1951 |

| No. of Bonds | Denomination | Amount | Maturity |
|-------------------|--------------|-----------|--------------|
| 62 to 67, incl. | \$1000.00 | \$6000.00 | July 1, 1952 |
| 68 to 73, incl. | 1000.00 | 6000.00 | July 1, 1953 |
| 74 to 79, incl. | 1000.00 | 6000.00 | July 1, 1954 |
| 80 | 500.00 | 500.00 | July 1, 1954 |
| 81 to 86, incl. | 1000.00 | 6000.00 | July 1, 1955 |
| 87 | 500.00 | 500.00 | July 1, 1955 |
| 88 to 93, incl. | 1000.00 | 6000.00 | July 1, 1956 |
| 94 | 500.00 | 500.00 | July 1, 1956 |
| 95 to 101, incl. | 1000.00 | 7000.00 | July 1, 1957 |
| 102 to 108, incl. | 1000.00 | 7000.00 | July 1, 1958 |
| 109 | 500.00 | 500.00 | July 1, 1958 |
| 110 to 116, incl. | 1000.00 | 7000.00 | July 1, 1959 |
| 117 | 500.00 | 500.00 | July 1, 1959 |
| 118 to 125, incl. | 1000.00 | 8000.00 | July 1, 1960 |
| 126 to 133, incl. | 1000.00 | 8000.00 | July 1, 1961 |
| 134 to 141, incl. | 1000.00 | 8000.00 | July 1, 1962 |
| 142 | 500.00 | 500.00 | July 1, 1962 |
| 143 to 151, incl. | 1000.00 | 9000.00 | July 1, 1963 |
| 152 to 160, incl. | 1000.00 | 9000.00 | July 1, 1964 |
| 161 to 169, incl. | 1000.00 | 9000.00 | July 1, 1965 |
| 170 | 500.00 | 500.00 | July 1, 1965 |
| 171 to 180, incl. | 1000.00 | 10,000.00 | July 1, 1966 |
| 181 to 190, incl. | 1000.00 | 10,000.00 | July 1, 1967 |
| 191 | 500.00 | 500.00 | July 1, 1967 |
| 192 to 201, incl. | 1000.00 | 10,000.00 | July 1, 1968 |
| 202 | 500.00 | 500.00 | July 1, 1968 |

[fol. 67] Said bonds being in substantially the following form:

United States of America
State of Arkansas

Chicot County Drainage District of Chicot County
4% Refunding Bond

Due , 19

No. \$

Know all men by these presents:

The Chicot County Drainage District of Chicot County, in the State of Arkansas, acknowledges itself to owe, and for value received hereby promises to pay to bearer, or, if registered as to principal, to the registered holder hereof the sum of Dollars, in lawful money of the United States of America, on the first day of July 19 with interest thereon from the first day of July, 1935, at the rate of four per centum per annum, payable semi-annually on the first day of January and July in each year, on presentation and surrender of the annexed interest coupons as they severally mature. Both principal and interest of this bond are hereby made payable at the Union Planters National Bank & Trust Company,

in the City of Memphis, Tennessee, or at the Continental-Illinois National Bank & Trust Company of Chicago, in the city of Chicago, Illinois, at the option of the holder hereof.

This bond is one of a series of like tenor and effect, except as to numbers, denominations and maturities, aggregating One Hundred Ninety-three Thousand Five Hundred Dollars (\$193,500), numbered from 1 to 202, both inclusive, issued for the purpose of refunding not less than a like par amount of the legally binding outstanding bonds of said District issued for the purpose of securing funds for the construction of the completed system of drainage improvements in such District, and under and in full compliance with the Constitution and laws of the State of Arkansas, including, among others, an Act of the General Assembly of the State of Arkansas, entitled: 'An Act to provide for the creation of Drainage Districts in this State,' approved May 27, 1909, as amended, Act No. 16 of [fol. 68] said General Assembly of the year 1927; Act No. 47 of said General Assembly of the year 1929; Act No. 240 of said General Assembly of the year 1931; and under and in full compliance with orders, resolutions and proceedings of the County Court of said County and the Board of Commissioners of said Drainage District, duly and legally had and adopted. This bond and attached interest coupons, as well as all other bonds and coupons forming a part of this issue, are payable out of the proceeds of taxes heretofore legally levied upon the real property, town lots, railroads and tramroads embraced within said district and benefited by said improvement, and are secured by a prior tax lien on all of said real property, town lots, railroads and tramroads.

The Drainage District hereby covenants that it is duly and legally existing as a drainage District under the Constitution and laws of the State of Arkansas; that the real property, town lots, railroads and tramroads within the district have been duly assessed for the making of said improvements, as required by law, and said assessments of benefits and taxes in such District have been duly pledged and mortgaged in trust for the security of this bond; that all acts, conditions and things required to be done precedent to and in the issuing of this bond, including the organization of said district, the adjudication of the benefits and damages against the real property, town lots, railroads and tramroads therein, in assessing benefits and in levying the

drainage tax and in pledging and mortgaging said assessments of benefits and taxes, have existed, have happened and have been performed in regular and due form as required by law; and that the total amount of bonds issued by this district, including this bond, does not exceed the net benefits assessed or the taxes levied and uncollected at the time said bonds are issued, or any statutory or constitutional limitation.

For the faithful performance, in apt time and manner, of every act required and necessary to provide for the prompt payment of the principal and interest of this bond, as the same mature, the full faith, credit, assessments of benefits and other resources of said drainage district are hereby irrevocably pledged.

[fol. 69] This bond is transferable by delivery, unless registered as to principal, at the office of the Secretary of the District, in the City of Lake Village, County of Chicot, State of Arkansas, and such registration noted hereon by said Secretary. After such registration, upon delivery to said Secretary of a written instrument of transfer executed by the registered holder, or by his attorney thereunto duly authorized, this bond may be transferred, and such transfer shall be plainly noted hereon. No transfer hereof shall thereafter be valid unless so made; but this bond may be discharged from registration by being, in like manner, transferred to bearer, and thereafter transferability by delivery shall be restored, and this bond may again, from time to time, be registered or transferred to bearer as before. No such registration shall affect the negotiability of the coupons appertaining thereto, which shall continue to be transferable by delivery merely, and shall remain payable to bearer.

If default shall be made in the payment of any interest coupon appertaining to this bond when and as the same shall become due and payable, and such default shall have continued for a period of thirty (30) days, the holder of this bond may, by notice in writing to the Secretary of the District, declare the principal of this bond to be due and payable immediately after such notice, and upon such declaration the principal of this bond shall become and be immediately due and payable.

This provision, however, is subject to the condition that, if at any time after the maturity of this bond shall have

been accelerated, all interest coupons pertaining thereto then in default shall be paid in full, the holder hereof may, by notice in writing delivered to said Secretary, waive such default and may thereby rescind and annul such declaration and its consequences, but no such waiver, rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

This bond shall not be valid until it shall have been authenticated by the certificate hereon, duly signed by the Union Planters National Bank & Trust Company, of Memphis, Tennessee, as Trustee for the holders of the bonds of this series.

[fol. 70] The rights of the holder of this bond with reference to the assessments of benefits and taxes, are fully set forth in an instrument of pledge and mortgage executed by Chicot County Drainage District of Chicot County, Arkansas, to the Union Planters National Bank & Trust Company, of Memphis, Tennessee, as Trustee, and which is recorded in the office of the Recorder of Deeds of said county, and to which reference is hereby made.

In Witness Whereof, Chicot County Drainage District of Chicot County, Arkansas, has caused this bond to be signed by the members of its Board of Commissioners attested with its corporate seal, and has caused the interest coupons hereunto attached to be executed with the facsimile signature of the Chairman of its Board of Commissioners, as of the first day of July, 1935.

Chicot County Drainage District of Chicot County,
Arkansas, by _____, _____, _____, _____,
_____, _____, Commissioners.

(Coupon)

No. _____.

January,

On the first day of July, 19____, Chicot County Drainage District of Chicot County, Arkansas, promises to pay to bearer _____ Dollars, in lawful money of the United States of America, at the Union Planters National Bank & Trust Company, in the City of Memphis, Tennessee, or at the Continental-Illinois National Bank & Trust Company of Chicago, in the City of Chicago, Illinois, at the option of the holder hereof, being six months' interest then due

[fol. 71] on its refunding bond dated July 1, 1935, and numbered _____.

_____, Chairman.

(The signature of the Chairman to the coupons attached to said bonds may be lithographed or engraved.)

On the back of said bonds is to appear the following:

CERTIFICATE

This is one of the bonds aggregating \$193,500, described within.

Union Planters National Bank & Trust Company,
Trustee, by _____.

(Form of Registry Endorsement to appear on the back of each bond.)

| Date of registration: | In Whose Name Registered | Signature of Secretary of District |
|-----------------------|--------------------------|------------------------------------|
| | | |

Now, Therefore, in consideration of the sum of One Dollar and other good and sufficient considerations, and for the purpose of securing each and all of the aforesaid bonds and interest coupons thereto attached, as they severally mature, the said Chicot County Drainage District of Chicot County, Arkansas, doth hereby pledge, mortgage, assign, transfer and set over to the Union Planters National Bank & Trust Company, of Memphis, Tennessee, as Trustee, and to its successors and assigns, its entire assessment of benefits, which now amounts to \$1,551,122.27, and all assessments of benefits that may hereafter be made upon the real property in said District, and also all uncollected ass-
[fol. 72] sessments and taxes levied by the County Court of said county upon the real property, town lots, railroads and tramroads in said district, together with all assessments and taxes that may hereafter be levied thereon; and in addition to the rights of individual bondholders in case

any property owner makes default in payment of any assessment, it is agreed that said Trustee, on behalf of the holder of the bonds hereby secured, may take all steps, whether by suit in chancery or mandamus, for the enforcement of the right of the holders of said bonds that are granted to the said holders or to the commissioners of this district by the terms of the act of the General Assembly of the State of Arkansas; and as a special security for the payment of the bonds hereinbefore described, all sums received from the redemption or sale of lands heretofore forfeited to the district for the non-payment of taxes, any other income that may be received from said lands such as rentals, income from the sale of timber, etc., and all taxes now overdue upon any of the lands, of the district are specially pledged; and all sums derived from the redemption or sale of such lands and all claims for taxes now due the said district are hereby assigned to the said Trustee, to be deposited with the Union Planters National Bank & Trust Company, of Memphis, Tennessee, and to be applied exclusively to the payment of the interest and principal of the bonds hereinbefore set forth.

All bonds, as they are paid, shall be cancelled by the said Union Planters National Bank & Trust Company, of Memphis, Tennessee, and returned to the District.

Said District further agrees that if default takes place in the payment of any of said bonds or coupons, and that by reason thereof the Trustee shall take any action hereunder on behalf of the holders of the bonds or coupons, there shall be paid to the said Trustee, out of the proceeds of said assessments and before the payment of the interest and principal of said bonds, a reasonable compensation for its services and for the services of such counsel as the Trustee may find it necessary to employ. Any bondholder shall have the right to take any action in his own behalf, which right shall be cumulative to his right to insist upon the action being taken by the Trustee.

[fol. 73] In case the Trustee refuses to act, resigns, dies or becomes incompetent, the holder or holders of a majority of the bonds aforesaid may, by an instrument filed in the office of the Recorder of Deeds of Chicot County, in the State of Arkansas, appoint a new trustee; and the like majority in amount of the holders of said bonds may, by an instrument so executed and filed, remove the Trustee and appoint a new trustee in his place. Any substituted

trustee shall have all the rights and powers of the Trustee herein named.

The District will pay the cost of recording and satisfying this pledge and any other or further instruments executed hereunder.

The District further agrees that if default is made for thirty days in the payment of any interest coupon, the holder of the bond thereto attached may declare the same immediately due and payable.

Said Trustee shall be responsible only for wilful misconduct in the performance of its duties. The recitals of fact contained in said bonds and in this instrument are made by the District, and shall not be considered as made by the Trustee. The Trustee shall not be required to see that this pledge is properly executed or recorded, nor shall it be required to take notice or be deemed to have notice of any default of said district, unless it shall have been specifically notified in writing of such default, nor shall it be required to take action under this pledge until it has been indemnified to its satisfaction by the holder or holders of the bonds above mentioned, or some of them, against loss or expense by reason of taking such action. The Trustee may at any time resign the trust by mailing its resignation to the Chairman or Secretary of the Board of Commissioners of said District, at the City of Lake Village, Arkansas.

It is hereby covenanted and agreed that the Trustee herein named shall be subrogated, for the benefit of the holders of the bonds hereinabove provided for, to all the rights, titles and interest of the holders of the bonds which have been refunded by the issue of bonds authorized hereby; and although said bonds may have been canceled, they [fol. 74] shall, upon the failure to pay the interest, or principal of the bonds secured hereby at any time for a period of thirty days, be deemed to be valid and subsisting securities, attended with all the rights, equities and remedies which attended them when in the hands of innocent purchasers for value. There shall, however, be but one satisfaction, and if the collection of the bonds which have been refunded is enforced, it shall operate as a satisfaction of the bonds hereby authorized.

In Witness Whereof, the said Chicot County Drainage District of Chicot County, Arkansas, has caused this instru-

ment to be executed under the hands of its commissioners and under its corporate seal, this 30 day of October, 1935.

Chicot County Drainage District of Chicot County, Arkansas, by C. M. Matthews, by N. W. Bunker, by Sam Epstein, by B. C. Clark, by F. H. Dantzler, Commissioners.

(Seal of Chicot County Drainage District.)

STATE OF ARKANSAS;

County of Chicot, ss:

On this 30 day of October, 1935, before me a Notary Public, duly commissioned, qualified and acting within and for the said County and State, appeared C. M. Matthews, B. C. Clerk, Sam Epstein, F. H. Dantzler and N. W. Bunker, Commissioners of Chicot County Drainage District of Chicot County, Arkansas, being the persons authorized by the said District to execute such instrument, to me personally well known, who state that they were commissioners of said Drainage District, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said District; and further stated and acknowledged that they had so signed, executed [fol. 75] and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal, this 30 day of October, 1935.

Raymond L. Hudson, Notary Public. (Seal.)

My commission expires 12-1-37.

Filed for record Oct. 31st at 9:00 o'clock A. M. Recorded October 31st, 1935."

Subsequent to the time proceedings were instituted to refinance the indebtedness of this district, the rate of assessed benefits was reduced from 4% per year to 2% per year, effective in 1934 taxes payable in 1935, the tax now being levied at the rate of 2% per year, 1½% for bond service and ½ of 1% for maintenance and operations. All these taxes have been pledged to secure the indebtedness incurred under the bond issue of July 1, 1935.

On cross-examination, the witness testified as follows: (Without objection, a certified copy of the pledge securing

the original bond issue of the district was introduced as Exhibit No. 18, and is in words and figures as follows:)

"EXHIBIT NO. 18

**CHICOT COUNTY DRAINAGE DISTRICT,
of Chicot County, Arkansas:**

To: Pledge Liberty Central Trust Company, in St. Louis, Mo. as Trustee.

Know All Men By These Present: That, Whereas, Chicot County Drainage District, of Chicot County, in the State of Arkansas, has executed its coupon bonds payable at the office of the Liberty Central Trust Company in St. Louis, Missouri, as follows:

[fol. 76]

| Nos. of Bonds | Amount | Maturity |
|------------------|--------|------------------|
| 1 to 22, Inc. | 22,000 | October 15, 1929 |
| 23 " 45, | 23,000 | " 15, 1930 |
| 46 " 69, | 24,000 | " 15, 1931 |
| 70 " 95, | 26,000 | " 15, 1932 |
| 96 to 123, inc. | 28,000 | " 15, 1933 |
| 124 " 153, | 30,000 | " 15, 1934 |
| 154 " 184, | 31,000 | " 15, 1935 |
| 185 " 217, | 33,000 | " 15, 1936 |
| 218 " 252, | 35,000 | " 15, 1937 |
| 253 " 289, | 37,000 | " 15, 1938 |
| 290 " 328, | 39,000 | " 15, 1939 |
| 329 " 369, | 41,000 | " 15, 1940 |
| 370 " 411, | 42,000 | " 15, 1941 |
| 412 " 456, | 45,000 | " 15, 1942 |
| 457 " 504, | 48,000 | " 15, 1943 |
| 505 " 554, | 50,000 | " 15, 1944 |
| 555 " 607, | 53,000 | " 15, 1945 |
| 608 to 663, inc. | 56,000 | October 15, 1946 |
| 664 " 722, | 59,000 | " 15, 1947 |
| 723 " 784, | 62,000 | " 15, 1948 |
| 785 " 850, | 66,000 | " 15, 1949 |

All of said bonds bearing date of April 15, 1924, and bearing interest at the rate of five and one-half per cent per annum, payable semi-annually on the fifteenth day of April and October of each year as evidenced by coupons thereto attached, and being substantially in the following form except as to dates of maturity, to-wit:

United States of America
 State of Arkansas
 County of Chicot
 Chicot County Drainage District,
 5½% Drainage Bond

| | |
|-----|-----------|
| No. | \$1000.00 |
|-----|-----------|

Know All Men By These Presents: That Chicot County Drainage District, of the County of Chicot, in the State

of Arkansas, acknowledges itself to owe and for value received, hereby promises to pay to bearer the sum of One Thousand Dollars in gold coin of the United States of America of the present standard of weight and fineness on the fifteenth day of October, 19—, at the rate of five and one-half per centum per annum, payable semi-annually on the fifteenth day of April and October in each year, on presentation and surrender of the annexed interest coupons as they severally mature. Both principal and interest of [fol. 77] this bond are hereby made payable at the office of the Liberty Central Trust Company, in the City of St. Louis, State of Missouri.

This bond is one of a series of like tenor and effect except as to maturity, aggregating Eight Hundred and Fifty Thousand Dollars (\$850,000.00); numbered from one (1) to eight hundred and fifty (850), inclusive, issued for the purpose of hastening the work of constructing a system of drainage in said Chicot County Drainage District, under and pursuant to and in full compliance with the constitution and laws of the State of Arkansas, including among others, Act Number 405 of the Extraordinary Session of the General Assembly of the State of Arkansas of the year 1920, entitled, 'An Act to Create and Establish the Chicot County Drainage District in Chicot County, to provide for a Board of Commissioners; Assessment of Benefits, Collection of Taxes, Issuance of Bonds, Construction of Drains and Ditches and for Other Purposes,' approved February 25, 1920, Act No. 432 of the Acts of Said General Assembly of the year 1921, 'An Act to Amend Section 16 heretofore or hereafter assessed, and all other resources of said Drainage District are hereby irrevocably pledged.

This bond shall not be valid until it shall have been authenticated by the certificate hereon duly signed by the Liberty Central Trust Company, of St. Louis, Missoeuri.

In Witness Whereof, Chicot County Drainage District of Chicot County, in the State of Arkansas, has caused this bond to be signed by the members of its Board of Commissioners, attested with its corporate seal and has caused the interest coupons hereunto attached to be executed with the fac simile signature of the Chairman of its Board of Commissioners on the fifteenth day of April, 1924.

Chicot County Drainage District of Chicot County,
Arkansas, By Joe Sloss, C. P. Wilson, R. D.
Chotard, Hermon Carlton, C. M. Matthews, Com-
missioners.

[fol. 78]

Coupon

No. —.

April

On the fifteen day of October, 19—, Chicot County Drainage District of Chicot County, in the State of Arkansas, promises to pay to bearer Twenty-seven and 50/100 Dollars in gold coin of the United States of America, at the office of the Liberty Central Trust Company, St. Louis, Missouri, being six months' interest then due on its bond dated April 15, 1924, and numbered —.

Joe Sloss, Chairman.

The signature of the Chairman to the coupons attached to said bonds may be lithographed or engraved.

On the filing of said bonds is to appear the following:

Certificate

This is to certify that this bond is one of a series of eight hundred and fifty (850) bonds of like tenor and effect, except as to maturity, mentioned and described on the face thereof.

Liberty Central Trust Company, By — — —.

St. Louis, Missouri,

— — —, 1924.

Now, Therefore, in consideration of the sum of One Dollar (\$100) and other good and sufficient considerations, and for the purpose of securing the payment of each and all of the aforesaid bonds, and the interest coupons thereto attached, as they severally mature, the said Chicot County Drainage District of Chicot County in the State of Arkansas, doth hereby pledge, assign, transfer, mortgage and set over to the said Liberty Central Trust Company, of the City of St. Louis, and State of Missouri, as Trustee, all uncollected assessments levied by the County Court upon the real property, public roads, railroads and tram-roads in said District, together with all assessments that may hereafter be levied thereon, and in case any property owner makes default in the payment of any assessment, [fol. 79] it is agreed that said Trustee, in behalf of the holders of the bonds hereby secured, may take all steps, whether by suit in Chancery or mandamus, for the enforce-

ment of the rights of the holders or to the Commissioners of this district by the terms of said Acts of the General Assembly of the State of Arkansas referred to in said bonds.

Said district further agrees that if default takes place in the payment of any of said bonds or coupons, there shall be paid to said Trustee out of the proceeds of said assessments, and before the payment of the interest and principal of said bonds, a reasonable compensation to the Trustee and to such counsel as the trustee may find it necessary to employ. In case the Trustee refuses to act, resigns or ceases to exist, the holder or holders of a majority of the bonds aforesaid, may, by an instrument filed in the office of the Recorder of Deeds of Chicot County, in the State of Arkansas, appoint a new Trustee, who shall have all the rights and powers of the trustee herein named.

The District further agrees that if default is made for thirty days in the payment of any interest coupon, the holder of the bond thereto attached may declare the same immediately due and payable.

The District will pay the cost of recording and satisfying this pledge.

The said trustee shall be entitled to reasonable compensation by the district for all services performed and reimbursement for expenses incurred in the performance of its duties under this trust.

The said Trustee shall be responsible only for wilful misconduct in the execution of its trust. The recitals of fact contained in said bonds and in this instrument are statements of the said district and shall not be considered as made by the Trustee. The Trustee shall not be required to take notice or be deemed to have notice of any default of said Drainage District, unless it shall have been specifically notified in writing of such default, nor shall it be required to take action under this pledge until it shall have been indemnified to its satisfaction by the holder or holders of the bonds above mentioned, or some of them, against loss or expense by reason of taking said action.

[fol. 80] The trustee may at any time resign the trust on ten days' notice by mail addressed to the Chairman or Secretary of the Board of Commissioners, at the Post Office, of Lake Village, Arkansas.

In Witness Whereof, the said Chicot County Drainage District of Chicot County, Arkansas, has caused this instru-

ment to be executed under the hands of its commissioners and under its corporate seal, on this 5th day of August, 1924.

Chicot County Drainage District, of Chicot County, Arkansas, By Joe Sloss, C. P. Wilson, R. D. Chotard, Herman Carlton, C. M. Matthews, Commissioners. (Seal.)

STATE OF ARKANSAS,
County of Chicot.

On this 5th day of August, 1924, before me, a Notary Public, duly commissioned, qualified and acting within and for the said County and State, appeared Herman Carlton, Joe Sloss, R. D. Chotard, C. P. Wilson and C. M. Matthews, the Commissioners of Chicot County Drainage District of Chicot County, Arkansas, being the persons authorized by said District to execute such instrument, to me personally well known, who stated that they were the commissioners of Chicot County Drainage District of Chicot County, Arkansas, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said district; and, further state and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal, this 5th day of August, 1924.

W. H. Moore, Notary Public. (Seal.)

My commission will expire April 17, 1925.

[fol. 81] Filed for Record August 6th, 1924 at 10:35 o'clock A. M. Recorded August 6th, 1924.

CLERK'S CERTIFICATE OF TRANSCRIPT

STATE OF ARKANSAS,
County of Chicot, ss:

I, Dixon T. Gaines, Clerk of the Circuit Court and Ex-Officio Recorder in and for the County and State aforesaid, do hereby certify that the annexed and foregoing seven (7) pages contain a true and perfect copy of a certain Pledge executed by Chicot County Drainage District of Chicot County, Arkansas, to Liberty Central Trust Company of St. Louis, Missouri, as therein set forth, and as

the same appears of record at page 257 of Volume R-3 of the Records of Chicot County, Arkansas.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, this the 12th day of July, 1937,

Dixon T. Gaines, Clerk. By, Irene Turpin, D. C."

The District issued \$193,500.00 of new bonds in order to take up the old bonds. Since these new bonds were issued in 1935, we have paid \$110,500.00 of them. We now have outstanding only \$83,000.00 of new bonds. We have approximately \$5,000.00 cash on hand in addition to the money deposited in the court here. The only indebtedness the district now has is the \$83,000.00 of new bonds, and its indebtedness on the old bonds that have not come in. The last figure we had was that approximately \$24,000.00 were still outstanding.

On redirect examination, Mr. Moore testified as follows:

Prior to the time the refinancing of the district's indebtedness was accomplished the district was bankrupt. It had been in default for a considerable time and the interest and principal were both in default. It was only through the accomplishments under the decree of this court and in the bankruptcy court that the district was able to get itself in a solvent condition.

[fol. 82] On recross-examination, witness testified as follows:

I do not have before me the total assessed benefits in the district, but I believe it is over \$2,000,000.00. The total acreage is over 147,000 acres.

This was all the testimony offered at the trial.

Whereupon the plaintiffs requested findings of fact as follows:

FINDINGS OF FACT REQUESTED BY PLAINTIFFS

"The plaintiffs, The Baxter State Bank, is a corporation, and Lena S. Shields an individual, and both residents of Baxter Springs in the State of Kansas. That the defendant, Chicot Drainage District, of Chicot County, was

duly organized under special Act 405 of the extraordinary session of the General Assembly of Arkansas of 1920, approved February 20th, 1920, as amended by Act 432 of the Acts of 1921, and under the General Drainage Law of Arkansas, approved May 27th, 1909, and it is and has been operating as such ever since its organization. That the defendant district regularly issued and the plaintiffs have purchased and owned the following bonds, dated April 15th, 1924, bearing five and one-half per cent (5½%) interest from date, interest payable semi-annually, and said bonds are outstanding due and unpaid, to-wit:

| Owner, | Bond No., | Amount | Due Date |
|------------------|--------------|--------|------------------|
| The Baxter State | | | |
| Bank | 207 | \$1000 | October 1936 |
| Same | 402 | 1000 | October 1941 |
| Same | 587 | 1000 | October 1945 |
| Same | 588 | 1000 | October 1945 |
| Same | 589 | 1000 | October 1945 |
| Same | 590 | 1000 | October 1945 |
| Same | 591 | 1000 | October 1945 |
| Same | 825 | 1000 | October 1949 |
| Same | 826 | 1000 | October 1949 |
| Same | 827 | 1000 | October 1949 |
| Same | 834 | 1000 | October 1949 |
| Lena S. Shields | 197 | 1000 | October 15, 1936 |
| Same | 299 | 1000 | Oct. 15, 1937 |
| Same | 312 | 1000 | Oct. 15, 1939 |

[fol. 83] "That interest was paid on said bonds up to October 15th, 1932 and all interest and maturities thereafter due, and the Principal and interest therein is now due the plaintiffs.

"The foregoing bonds are valid and secured by a pledge executed by the defendant District of even date with said bond pledging all the assets and income of the district to secure said bonds.

"That the decree of this Court entered on the 28th day of March, 1936, wherein the Chicot Drainage District filed its petition for authority to effect a plan of debt readjustment under the terms and provisions of an Act of the Seventy-third Congress, numbered 251, approved May 21, 1934, constituting an amendment to the General Bankruptcy Law of the United States, Title 11, U. S. C. A., Paragraph 301 to 303, is void and that the Court therein in said cause number 4357 'being styled In the Matter of Chicot County Drainage District, Bankrupt,' had no jurisdiction of the parties plaintiff herein nor of the subject

matter and said decree as to these parties being void because said act was unconstitutional."

The foregoing findings of fact were given by the court, to the giving of which the defendant saved exceptions to each and every paragraph.

The defendant requested the following findings of fact:

FINDINGS OF FACT REQUESTED BY DEFENDANT

Defendant requests the Court to make the following findings of fact:

"1. That the plaintiff, Baxter State Bank, is the owner of bonds issued by Chicot County Drainage District, dated April 15, 1924, in the total amount of Eleven Thousand Dollars (\$11,000.00), and numbered as follows:

207, 402, 587, 588, 589, 590, 591, 825, 826, 827, 834.

"That plaintiff was the owner of said bonds on the 17th day of June, 1935, and has continued to be the owner since said date.

[fol. 84] "2. That the plaintiff, Mrs. Lena S. Shields, is the owner of bonds issued by the Chicot County Drainage District dated April 15, 1924, in the total amount of Three Thousand Dollars (\$3,000.00) and numbered as follows:

197, 299, 312.

"That she was the owner of said bonds on July 17, 1935, and has continued to be the owner of said bonds since said date.

"3. That on the 17th day of June, 1935, the Chicot County Drainage District filed in the United States District Court for the Western Division of the Eastern District of Arkansas a petition for authority to effect a plan of debt readjustment under the terms and provisions of an act of the Seventy-Third Congress, numbered 251, approved May 21, 1934, constituting an amendment to the General Bankruptcy Law of the United States, Title 11, U. S. C. A., Paragraphs 301 to 303, said cause being styled 'In the Matter of Chicot County Drainage District, Bankrupt', it being cause No. 4357 in said court.

"4. That the plaintiffs, The Baxter State Bank and Mrs. Lena S. Shields, were made parties to said proceeding by publication of a notice of said proceedings in accordance with an order dated June 20, 1935, of the court wherein said cause was filed, and by mailing to them personally a notice of said proceedings in accordance with the said order. That said notices were received by the plaintiffs.

"5. That all things required to be done by said act of the Seventy-Third Congress, numbered 251, approved May 21, 1934, were done and performed by the defendant district, and that on the 28th day of March, 1936, said court entered a final decree in said cause wherein it was recited that all the bonds issued under date of April 15, 1924, whether theretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, were thereby cancelled, annulled, and held for naught as enforceable obligations of the petitioning district, except as therein provided, and that the holders thereof were forever restrained and enjoined from otherwise asserting any claim or demand against the petitioning district or its officers, [or against [fol. 85] the petitioning district or its officers,] or against the property situated therein, or the owners thereof.

"6. That at the time said proceedings were instituted on July 17, 1935, there were outstanding bonds against said district in the total amount of Seven Hundred Sixty-two Thousand, Five Hundred Thirty-six and 36/100 Dollars (\$762,536.36). That the holders of all of said bonds, except the owners of approximately Twenty-four Thousand Dollars (\$24,000.00) of bonds, had theretofore accepted and approved the plan of readjustment offered by the defendant district, which plan was confirmed and approved by the United States District Court for the Eastern District of Arkansas, Western Division, in Cause No. 4357 in said court, it being styled 'In the Matter of Chicot County Drainage District, Bankrupt.' That ample notice by publication and by mail was given to plaintiffs of the hearing held by the court to determine whether said plan should be approved and that opportunity was presented to plaintiffs to object to said plan. That plaintiffs had actual notice of this hearing but did not appear or contest the approval of the plan.

"7. That, pursuant to the decree in said cause above mentioned, the defendant, Chicot County Drainage Dis-

trict, issued refunding bonds in the total amount of One Hundred Ninety-three Thousand, Five Hundred Dollars (\$193,500.00), and, to secure said bonds, executed its mortgage and pledge wherein it pledged its entire assessment of benefits and all assessments of benefits that may thereafter be made upon the real property in said district to the Union Planters National Bank & Trust Company of Memphis, Tennessee, as Trustee. That said mortgage and pledge transferred to the trustee as security for said bonds all assets of the district of every kind and nature.

"8. That, in reliance upon the validity of the proceedings in Case No. 4357, hereinbefore mentioned, and, in reliance upon the validity of the mortgage and pledge executed by said district to secure its bond issue of July 1, 1935, in the total amount of One Hundred Ninety-three Thousand, Five Hundred Dollars (\$193,500.00), the Reconstruction Finance Corporation purchased said entire issue of bonds.

[fol. 86] "9. That, although the plaintiffs, and each of them, were served in accordance with the Act of the Seventy-Third Congress, numbered 251, approved May 21, 1934, in said Cause No. 4357, neither of said plaintiffs made any appearance therein or objected in any manner to the proceedings therein had, and neither of said parties took an appeal or attempted to take an appeal from the final decree of said court entered on the 28th day of March, 1936, and that the time for appeal from said cause had now expired, and that the term at which said decree was entered has expired.

"10. That on the 11th day of November, 1935, the County Court of Chicot County, Arkansas, entered an order wherein it was ordered that said district levy annual taxes against the assessments in said district in the amount of 2 per cent of the assessed benefits, and that said levy of 2 per cent be used during the years 1935 to 1967, inclusive, for the purpose of paying the principal and interest of the refunding bonds issued by said district, and for building up a reserve fund for payment of said bonds.

"11. That the security of the refunding bonds issued July 1, 1935, would be affected and prejudiced should plaintiffs herein recover any amount in excess of the amount al-

lotted and decreed to them under the decree of this court in Case No. 4357, hereinbefore mentioned."

The court gave findings of fact numbered 1, 2, 3, 4, 5, 6, 7, 9, and 10, over the several and separate objections of plaintiffs. The court refused to give findings numbered 8 and 11, and the defendant saved exceptions to the refusal of the court to give these findings.

The court made the following declarations of law at the request of plaintiffs:

DECLARATIONS OF LAW REQUESTED BY PLAINTIFFS

"The plaintiffs should recover full amount of bonds with interest for the reason that the defense based upon judgment of this Court in cause No. 4357, being styled in the Matter of Chicot County Drainage District, Bankrupt, is void for the reason that the Act under which it was rendered [fol. 87] was unconstitutional and said judgment affords no defense to the validity of said bonds."

The defendant saved exceptions to the above declarations of law made by the court.

The defendant requested the following declarations of law:

DECLARATIONS OF LAW REQUESTED BY DEFENDANT

"Defendant requests the court to make the following declarations of law:

"1. That the United States District Court for the Western Division of the Eastern District of Arkansas, in Cause No. 4357 in said Court, it being styled 'In the Matter of Chicot County Drainage District, Bankrupt', had jurisdiction over the plaintiffs in this action, the Baxter State Bank and Mrs. Lena S. Shields, and had jurisdiction over the subject matter involved in said cause.

"2. That the final decree of said Court in said Cause No. 4357, entered on the 28th day of March, 1936, is binding upon the plaintiffs in this action and is res adjudicata of the issues involved in this suit.

"3. That the plaintiffs' complaint herein should be dismissed with costs to the defendant without prejudice to the rights of the plaintiffs to recover any and all sums to which

they may be entitled under the terms and provisions of the decree of this court in Cause No. 4357."

The court refused to make the above declarations of law and the defendant saved its several and separate exceptions to the refusal of the court to make the above declarations of law.

IN UNITED STATES DISTRICT COURT

APPROVAL OF BILL OF EXCEPTIONS

I, the undersigned, United States District Judge who presided at the trial in the above entitled cause, do hereby certify that the foregoing bill of exceptions contains all of the material facts, matters, things, proceedings, objections, rulings, and exceptions thereto occurring upon the trial of said cause and not heretofore a part of the record herein, including all evidence adduced at the trial (or all [fol. 88] evidence material to the issues presented by the assignments of error); and I further certify that the exhibits set forth or referred to, or both, in the foregoing bill of exceptions, constitute all the exhibits offered in evidence at the said trial, and I hereby make all of said exhibits a part of the foregoing bill of exceptions; and I hereby settle and allow the foregoing bill of exceptions as a full, true, and correct bill of exceptions in this cause and order the same filed as part of the record herein, and I further order the clerk of this court to attach to the said bill of exceptions all of the said exhibits not set forth therein; and to transmit said entire bill of exceptions, including all exhibits whatsoever, to the Circuit Court of Appeals for the Eighth Circuit.

I further certify that the foregoing bill of exceptions contains all local rules relating to the extension of the term for the purpose of presenting, settling, and filing a bill of exceptions, and all orders made by me extending the time for such presentation, settling and filing, and that the foregoing bill of exceptions is presented, settled, and allowed within the time prescribed for that purpose.

Dated this 27th day of September, 1938.

Thomas C. Trimble, United States District Judge; G. W. Hendricks, Atty. for Pltf.; E. L. McHaney, Jr., for Def.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Sept. 1, 1938

To the Honorable Thomas C. Trimble, Jr., District Judge:

[fol. 89] The defendant herein, feeling itself aggrieved by the final judgment made and entered in this cause finding the issues of fact and law in favor of the plaintiff, hereby prays and takes an appeal from said judgment to the Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith; and it prays that its appeal be allowed and that citation issue to the plaintiffs herein, as provided by law, commanding them to appear before the Circuit Court of Appeals for the Eighth Circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings and papers upon which said judgment was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit, sitting at St. Louis, Missouri.

And your petitioner further prays that the proper order be made herein touching the security that should be required of it to perfect its appeal.

Grover T. Owens, S. Lasker Ehrman, E. L. McHaney, Jr., Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Sept. 1, 1938

Comes now the defendant and appellant herein and files the following assignment of errors upon which it will rely upon appeal to the United States Circuit Court of Appeals for the Eighth Circuit:

1

The court erred in making declarations of law in favor of the plaintiffs as follows:

"The plaintiffs should recover full amount of bonds, with interest, for the reason that the defense based upon judg-

ment in this court in Cause No. 4357, being styled "In the matter of Chicot County Drainage District, Bankrupt," is void for the reason that the act under which it was rendered was unconstitutional and said judgment affords no defense to the validity of said bonds."

[fol. 90]. The defendant excepted to the action of the court in making said declarations of law and its exceptions were noted of record.

2

The court erred in refusing to grant defendant's request for declaration of law No. 1 as follows:

"That the United States District Court for the Western Division of the Eastern District of Arkansas, in Cause No. 4357 in said Court, it being styled 'In the Matter of Chicot County Drainage District, Bankrupt,' had jurisdiction over the plaintiffs in this action, the Baxter State Bank and Mrs. Lena S. Shields, and had jurisdiction over the subject-matter involved in said cause."

To which action of the court the defendant excepted and its exceptions were noted of record.

3.

The court erred in refusing to grant defendant's request for declaration of law No. 2; as follows:

"That the final decree of said Court in said Cause No. 4357, entered on the 28th day of March, 1936, is binding upon the plaintiffs in this action and is res judicata of the issues involved in this suit."

To which action of the court the defendant excepted and its exceptions were noted of record.

4

The court erred in refusing to grant defendant's request for declaration of Law No. 3, as follows:

"That the plaintiff's complaint herein should be dismissed with costs to the defendant without prejudice to the rights of the plaintiffs to recover any and all sums to which they may be entitled under the terms and provisions of the decree of this court in Cause No. 4357."

To which action of the court the defendant excepted and its exceptions were noted of record.

5

The court erred in finding the issues of fact and of law, in favor of the plaintiffs.

[fol. 91] Wherefore, the defendant and appellant prays that the judgment in said cause be reversed and the cause remanded to the District Court, with directions to said court as to further proceedings therein, and for such other and further relief as may be just in the premises.

Grover T. Owens, S. Lasker Ehrman, E. L. McHaney, Jr., Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT.

[Title omitted]

ORDER ALLOWING APPEAL—Filed Sept. 1, 1938

The defendant in the above entitled action having filed herein its petition for appeal from the judgment of the court on the 7th day of June, 1938, now, on motion of E. L. McHaney, Jr., attorney for petitioner,

It Is Ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the judgment heretofore entered herein be and the same is hereby allowed, and that a certified transcript of the record be forwarded to the United States Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri.

It Is Further Ordered that the appellant furnish a bond on appeal in the amount of \$500.00, the same to operate as a cost bond only.

Thomas C. Trimble, United States District Judge.

[File endorsement omitted.]

[fol. 92] Bond on appeal for \$500.00 approved and filed Sept. 1, 1938 omitted in printing.

[fol. 93] Citation in usual form showing service on G. W. Hendricks, filed Sept. 1, 1938 omitted in printing.

[fol. 94] IN UNITED STATES DISTRICT COURT

PRAECLPE FOR TRANSCRIPT—Filed Sept. 1, 1938

To: Honorable Sid B. Redding, Clerk of the United States District Court for the Eastern District of Arkansas, Western Division:

Will you please incorporate in the transcript of record on appeal in the United States Circuit Court of Appeals for the Eighth Circuit, in the above entitled cause, the following:

1. Complaint.
2. Summons.
3. Answer.
4. Demurrer to Answer.
5. Stipulation for Waiver of Jury.
6. Judgment.
7. Order extending time for filing Bill of Exceptions.
- 7-A. Bill of Exceptions.
8. Petition for Appeal.
9. Assignment of Errors.
10. Order allowing Appeal.
11. Bond; with approval thereon.
12. Citation and acceptance of Service.
13. This Praeclpe.
14. Clerk's Certificate.

Dated this 1st day of September, 1938.

Grover To Owens, S. Lasker Ehrman, E. L. McHaney,
Attorneys for Appellant.

[fol. 95] Due personal service of the within Praeclpe by copy, is hereby admitted this 1st day of September, 1938.

G. W. Hendricks, Attorney for Appellees.

[File endorsement omitted.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 96] Appearances of counsel omitted in printing.

[fol. 97] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER OF SUBMISSION—March 17, 1939

This cause having been called for hearing in its regular order, argument was commenced by Mr. E. L. McHaney, Jr., for appellant, continued by Mr. Arthur J. Johnson for appellees, and concluded by Mr. E. L. McHaney, Jr., for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 98] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT, MARCH TERM, A. D. 1939

No. 11,342

CHICOT COUNTY DRAINAGE DISTRICT, Appellant

vs.

THE BAXTER STATE BANK and MRS. LENA S. SHIELDS, Appellees

Appeal from the District Court of the United States for the Eastern District of Arkansas

Mr. E. L. McHaney, Jr. (Mr. James R. Yerger, Mr. Grover T. Owens, and Mr. S. Lasker Earman were with him on the brief) for Appellant.

Mr. Arthur J. Johnson (Mr. G. W. Hendricks was with him on the brief) for Appellees.

Before Gardner and Woodrough, Circuit Judges, and Otis, District Judge.

OPINION—April 29, 1939

GARDNER, Circuit Judge, delivered the opinion of the court.

This is an appeal from a judgment entered in favor of appellees, who were plaintiffs below, in an action on certain bonds owned by them and issued by the appellant Drainage District. The parties will be referred to as they appeared

in the lower court. No question is raised as to the sufficiency [fol. 99] of the pleadings. The defendant answered plaintiffs' complaint, which was in conventional form, pleading that in a bankruptcy proceeding brought in the United States District Court for the Eastern District of Arkansas, it had been adjudged in effect that the bondholders of the district, including the plaintiffs, were entitled to recover in that proceeding the sum of approximately \$360.00 on each \$1,000.00 bond; that under the terms and provisions of said decrees, plaintiffs had no valid claim against the defendant but were forever restrained and enjoined from asserting any claim or demand whatever against defendant, except as provided in said decree.

The bankruptcy proceedings referred to were initiated on June 17, 1935, by filing in the United States District Court for the Eastern District of Arkansas, a petition for authority to effect a plan of debt readjustment, pursuant to amendments to the Bankruptcy Act, adopted May 24, 1934, and designated as U. S. C. A. Title 14, Sections 301, 302 and 303. No question is raised as to the regularity of these proceedings as prescribed by the Act. Plaintiffs were made parties to said proceedings by publication of a notice thereof pursuant to order of the bankruptcy court, and by mailing to them personally a notice of said proceedings, which notice was received by each of them, but neither of them appeared therein either in person or by attorney. The decree which was entered therein on March 28, 1936, provided in part as follows:

"(c) That all the old bonds and other obligations of the petitioning district affected by the plan of debt readjustment approved in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioning district, except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof;"

No appeal was taken by the plaintiffs from the bankruptcy decree above referred to.

[fol. 100] The lower court held that the decree in bankruptcy entered March 28, 1936, was void because the court was without jurisdiction of the parties plaintiff or of the subject matter; that the plaintiffs were therefore entitled to recover the full amount of their bonds, and judgment was entered accordingly.

The determining question on this appeal is whether the bankruptcy decree constituted a defense to the maintenance of this action. The act amendatory of the bankruptcy laws under which the proceedings were had, culminating in the above-mentioned decree, was, subsequent to the entry of the decree, held to be unconstitutional because it materially restricted the states in the control of their financial affairs. *Ashton v. Cameron County Water Improvement Dist.*, 298 U. S. 513. It was held in that decision that the bankruptcy power of Congress does not extend to the states or their political subdivisions. This decree, as has been observed, purported to cancel the obligations upon which the present suit was brought. The bankruptcy court rendering the decree here pleaded as res judicata was a court of limited jurisdiction. *Smith v. Chase National Bank* (CCA8) 84 Fed. (2d) 608; *Nixon v. Michaels* (CCA8) 38 Fed. (2nd) 420. Its powers of compositions were fixed and limited by statute. *Wheeling Structural Steel Co. v. Moss* (CCA4) 62 Fed. (2d) 37. Its jurisdiction was therefore wholly dependent upon the amendatory act which was held to be unconstitutional in *Ashton v. Cameron County Water Improvement District*, supra. The act itself (Title 11, U. S. C. A., Secs. 301-303) indicates that Congress was of the view that the bankruptcy court was without jurisdiction except as it might be conferred by that act. Section 302 provides as follows:

"Until January 1, 1940, in addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudicate persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in this chapter of this title."

Then follows Section 303, which provides that a municipality or other political subdivision may file a petition setting out that the district is insolvent or unable to meet its debts, and submitting a plan of readjustment. The requirements of the petition are described in the act, and it is provided that upon the filing of such petition, the judge

[fol. 101] shall enter an order either approving or dismissing it.

Without further detailing the proceedings purported to be authorized by the act, it is sufficient for the purpose of this opinion to state that the proceeding taken was that prescribed by the statute, and if the court acquired jurisdiction, it was because of a compliance with the procedure so prescribed, and not otherwise.

If the decree was void, it could not be successfully pleaded as *res judicata*. McDonald v. Mabee, 243 U. S. 90. The act which purported to confer jurisdiction, being unconstitutional, was void and in legal contemplation was inoperative. Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559; Norton v. Shelby Co., 118 U. S. 425; Security Savings Bank v. Connell (Ia.) 200 N. W. 8; Servovitz v. State (Wis.) 113 N. W. 227; 1 Black on Judgments, Sec. 216.

In Chicago, I. & L. R. v. Hackett, *supra*, Mr. Justice Lurton, speaking for the Supreme Court with reference to the effect of an unconstitutional statute, said:

"That act was therefore as inoperative as if it had never been passed, for an unconstitutional act is not a law, and can neither confer a right or immunity nor operate to supersede any existing valid law."

In Security Savings Bank v. Connell, *supra*, the Supreme Court of Iowa considered a plea of *res judicata* in which the judgments relied upon were based upon laws later declared to be constitutional. In the course of that opinion it is said:

"If the decrees were merely erroneous, it may be conceded the rule contended for would apply, and they would still be binding as adjudications of the matter then and now at issue, the right to deduct from the value of the shares of stock in the bank in arriving at the assessed value of the stock the amount of tax-exempt government obligations held by it. It is doubtless true, as argued by appellant, that the constitutionality of the statute in question could have been raised in the proceedings resulting in the decrees now relied upon as an estoppel; that it was as unconstitutional then as when so declared; and that it must be assumed it would have been so held had the question been then raised. But that contention does not fully meet the situation. Not only was the statute open to attack on con-

stitutional grounds at the time the prior decrees were ren-[fol. 102] dered, but when it was by this court declared to be unconstitutional it ceased to be, as effectually as if it had never been passed."

Mr. Black, in his work on Judgments, Volume 1, Section 216, *supra*, states the applicable rule as follows:

"But if the alleged jurisdiction of a court to take any particular action is derived from a statute, and that statute is shown to be unconstitutional, the proceedings of the court must be considered void, for as the stream cannot rise higher than its source, no jurisdiction can be derived from a void act."

The rule laid down by this court in Woods Bros. Construction Co. v. Yankton County, 54 Fed. (2d) 304, is not in conflict. In that case, the jurisdiction of the court was not dependent upon the statute that had been declared unconstitutional after the entry of judgment. It was contended that the court had no jurisdiction to enter the original judgment. But we held that the court did have such jurisdiction. Here, the only authority of the bankruptcy court to act was dependent upon and derived from the statute which was declared by the Supreme Court to be unconstitutional. The decree entered was a nullity and constituted no defense to plaintiffs' action.

The judgment appealed from is therefore affirmed.

Woodrough, Circuit Judge, dissenting.

The appellant herein relies upon a judgment rendered by the District Court in a bankruptcy case during the interim between the time the Congress enacted the municipal corporations amendment to the Bankruptcy Act and the time the Supreme Court declared it unconstitutional. The question is, during that interim what was the state of our government in respect to that legislation? I assume that as to the acts of the Executive branch of the government founded thereon, they simply lost the sanction of the law when the law was held invalid. Probably the same is true as to administrative or quasi-judicial bodies. But it seems to me that our duly constituted courts, sitting in the various districts and circuits throughout the nation, function-

[fol. 103] ing in equity, law or bankruptcy, remained clothed with judicial power, including the power to pass on the constitutionality of the law and that their solemn judgments in all cases, including bankruptcy cases, ought to be given full faith and credit unless appealed from and reversed. The amendment to the Bankruptcy Act affected very large property rights. I think it ought not to be held that there was a hiatus of governmental power in respect to them, or that the Supreme Court decision annulling the amendment operated retroactively to render void the final unappealed from judgments of all the courts that had passed on the amendment and adjudicated rights between litigants in respect to it. It ought to be held that government by law is continuous at least in the courts of the nation.

[fol. 104] IN UNITED STATES CIRCUIT COURT OF APPEALS
EIGHTH CIRCUIT

No. 11342

CHICOT COUNTY DRAINAGE DISTRICT, Appellant

vs.

THE BAXTER STATE BANK AND MRS. LENA S. SHIELDS

JUDGMENT

April 29, 1939.

Appeal from the District Court of the United States for the Eastern District of Arkansas.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Arkansas, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that The Baxter State Bank and Mrs. Lena S. Shields have and recover against the Chicot County Drainage District the sum of Twenty Dollars for their costs herein and have execution therefor.

[fol. 105] IN UNITED STATES CIRCUIT COURT OF APPEALS
EIGHTH CIRCUIT

[Title omitted]

PETITION FOR REHEARING—Filed May 13, 1939

To the Circuit Court of Appeals for the Eighth Circuit,
and the Judges Thereof:

Comes now the petitioner, Chicot County Drainage District, the appellant in the above entitled cause, and presents this, its petition for rehearing of the above entitled cause, and in support thereof respectfully shows:

That the court, in holding that the decree in the bankruptcy court entered March 28, 1936, was a nullity and constituted no defense to the plaintiff's action, inadvertently overlooked two matters which, we submit, are important to a decision of this case, as follows:

1. The court inadvertently overlooked the fact that at the time the bankruptcy decree of March 28, 1936, was entered, courts of bankruptcy had jurisdiction of compositions.

2. The court inadvertently overlooked the fact that compositions by municipal taxing districts was a subject related to the general subject of bankruptcies and was one over which the Congress had power to legislate, and the act under which the bankruptcy decree was rendered was held unconstitutional, not because of the subject-matter of the act itself and not because Congress was without power to accomplish the desired result, but simply because of the manner in which Congress attempted to obtain the desired result.

I

The majority by their opinion overlooked the fact that at the time the bankruptcy decree was rendered courts of bankruptcy had jurisdiction of compositions.

In the opinion the majority say:

"The bankruptcy court rendering the decree here pleaded as res judicata was a court of limited jurisdiction. * * *. It had no jurisdiction of compositions. * * * Its jurisdiction was therefore wholly dependent upon the amendatory

act which was held to be unconstitutional in Ashton v. [fol. 107] Cameron County Water Improvement District, *supra.*"

This statement indicates that the majority rested its decision upon the fact that courts of bankruptcy had no jurisdiction of compositions. This assumption is, we submit, an erroneous one, since very early in the history of bankruptcy legislation in this country courts of bankruptcy have been held to have jurisdiction over compositions.

Continental Illinois National Bank & Trust Company of Chicago v. Chicago, Rock Island & Pacific Railroad, et al., 294 U. S. 648, 79 L. Ed. 1110.

Section 73 of the Bankruptcy Act, U. S. C. A. Title II, Section 202, provides as follows:

"In addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors as provided in Sections 202, 203, and 205 of this chapter."

U. S. C. A. Title 11, Section 202, provides as follows:

"Any person excepting a corporation may file a petition, . . . stating that . . . he desires to effect a composition or an extension of time to pay his debts."

U. S. C. A. Title 11, Section 203, provides for agricultural compositions and extensions.

[fol. 108] U. S. C. A. Title 11, Section 205, provides for reorganization of railroads engaged in interstate commerce.

U. S. C. A. Title 11, Section 207, provides for the reorganization of any corporation.

The first three of the above acts were passed in 1933 and the last in 1934. It is plain therefore, that at the time the bankruptcy decree was rendered in 1936 courts of bankruptcy did have jurisdiction of compositions. In *Continental Illinois National Bank & Trust Company v. Chicago, Rock Island & Pacific Railroad Co., 294 U. S. 648, L. Ed. 1110*, the constitutionality of the provisions of the bankruptcy act for the composition of debts by railroads engaged in interstate commerce was questioned. The Supreme Court, speaking through Mr. Justice Sutherland, there said:

"As outlined by that section, a plan of reorganization, when confirmed, cannot be distinguished in principle from the composition with creditors authorized by the act of 1867, as amended by the act of 1874. It is not necessary to the validity of either that the proceedings should result in an adjudication of bankruptcy. The constitutionality of the old provision for a composition is not open to doubt. *Re Reiman* (D. C.) 7 Ben. 455, Fed. Cas. No. 11,673, cited with approval in *Hanover Nat. Bank v. Moyses*, 186 U. S. 181, 46 L. Ed. 1113, 22 S. Ct. 857, 8 Am. Bankr. Rep. 1, supra. That provision was there sustained upon the broad ground that the 'subject of bankruptcies' was nothing less than 'the subject of the relations between an insolvent or [fol. 109] non-paying or fraudulent debtor, and his creditors, extending to his and their relief.' "

The court further said, quoting from the case of *Canada Southern R. Co. v. Gebhard*, 109 U. S. 527, 27 L. Ed. 1020, 3 S. Ct. 363:

"The confirmation and legalization of 'a scheme of arrangement', under such circumstances is no more than is done in bankruptcy when a 'composition' agreement with the bankrupt debtor, if assented to by the required majority of creditors, is made binding on the non-assenting minority. In no just sense do such governmental regulations deprive a person of his property without due process of law. They simply require each individual to so conduct himself for the general good as not unnecessarily to injure another." "

We submit, therefore, that at the time the bankruptcy decree was entered, courts of bankruptcy did have jurisdiction of compositions and that the exercise of such jurisdiction at that time and since was frequent.

II

The majority by its opinion overlooked the fact that the purpose of the first municipal bankruptcy act was one which the Congress had the power to accomplish and that the only reason that purpose was not accomplished by said act was because of the manner in which the Congress sought to accomplish it.

[fol. 110]. The majority by its opinion, after stating that courts of bankruptcy had no jurisdiction of compositions,

then stated that if the court acquired jurisdiction it was only because of the compliance with the act and "the act which purported to confer jurisdiction, being unconstitutional, was void and in legal contemplation was inoperative." Cases are cited to support this statement of law, and, as a general proposition, we concede that said statement is true. We submit, however, that that statement does not cover the situation here presented. The cases cited in support thereof do not pass upon the point in issue here. There is a vital distinction between the proposition here involved and that involved in the cases cited.

One of the cases cited by the court is that of Chicago, I. & L. Ry. v. Hackett, 228 U. S. 559, 57 L. Ed. 966. The court simply held in that case that the Federal Employers' Liability Act of June 11, 1906, being unconstitutional, did not supersede an Indiana statute dealing with the same question.

The case of Security Savings Bank v. Connell, 200 N. W. 8 (Iowa), also cited by the majority, involved the right of the bank to certain tax deductions under a legislative act, the bank pleading that although the act was unconstitutional, still a prior judgment against the bank in a prior year based the act was res judicata. The court merely held that the right to collect taxes was a separate and distinct right for each year and that the prior judgment was not res judicata in subsequent years. The court specifically passed over the question which was not there presented as to whether or not a judgment for the prior year was res [fol. 111] judicata for that year. In other words, whether or not the taxing authority could go back and retax for the year in which the judgment was rendered. That case, therefore, is not determinative of the question here presented.

The distinction which we believe should be made in cases of this sort is this: Where a court acts under the authority of a law which the legislative body has the power to enact, then in that case, we submit, the final unappealed from judgment of the court should be binding on the parties, whereas, if the court merely acts by virtue of legislation which it had no power to pass, then, in that event, the court's judgment should, of course, be void in its entirety. In other words, Congress did have power to pass a municipal bankruptcy act. This cannot be questioned, since it subsequently passed one which was held valid by the Supreme Court. The only reason the first act was unconstitutional was be-

cause it was held to be an interference by the government in purely local affairs. As construed by the court it would have permitted an involuntary petition. This defect was cured in the second act. The issue in the Ashton case was a narrow one and the act was held unconstitutional by a five to four decision. Congress, in passing the first municipal bankruptcy act, was legislating upon a subject upon which it had the power to legislate. This was recognized in the Ashton case. It could have accomplished the purpose it desired to accomplish in the first act had that act been properly worded. The difference between the first and second municipal bankruptcy acts is very slight. We believe there is a distinction where a court acts by virtue of such legislation and where a court acts under the authority of a statute, the result of which could never by any means be reached under constitutional authority.

[46. 112] In the first case there is power in Congress to confer jurisdiction and an attempt so to do, whereas in the latter case Congress merely attempts to usurp a power it does not possess. It is submitted that this distinction is a valid one, and that where a court acts under such a statute it is acting within its jurisdiction and its judgment therein cannot be impeached collaterally.

This court, in the case of *McWilliams v. Blanchard*, 96 Fed. (2d) 43, C. C. A. 8, 1938, made the following statement:

"Whatever may the nature of a question presented for judicial determination—whether depending on Federal, general, or local law—it if be embraced by the issues made, its determination by a court having jurisdiction of the parties and of the subject-matter binds the parties and their privies so long as the judgment remains unmodified or unreversed. *Mitchell v. First Nat. Bank of Chicago*, 180 U. S. 471, 481, 21 S. Ct. 418, 422, 45 L. Ed. 627.

"Whenever the right and the duty of a court to exercise its jurisdiction depends upon the decision of a question it has power to hear and determine, its judgment, right or wrong, is binding upon the parties and those in privity with them. *Foltz v. St. Louis & San Francisco Ry. Co.*, 8 Cir., 60 F. 316, 319; *Thompson v. Terminal Shares*, 8 Cir., 89 Fed. 2d 652, 655; *Wilcons v. Penn Mutual Life Ins. Co.*, 10 Cir., 91 F. 2d 317, 319. The power to decide includes the power to decide erroneously. *Simonitsch v. Bruce*, 8 Cir., 258 F. 331, 333; *Jack v. Hood*, 10 Cir., 39 F. 2d 594, 595."

[fol. 113] Using that statement as the rule to be applied in this case, the following conclusion is reached: The right of the district court to exercise its jurisdiction in the bankruptcy case depended upon the decision of the constitutionality of the first municipal bankruptcy act. It had the right and power to hear and determine that issue and, according to the rule stated in the above case, that decision is binding upon the parties whether it be right or wrong. In other words, the district court in rendering the decree of March 28, 1936, decided that the municipal bankruptcy act was constitutional, and, having decided that question, rendered the decree. That court had the power to decide upon the constitutionality of that statute, for, if it did not, then there would be no way to determine the validity of the legislation.

There is another element in this case which we believe was overlooked by the majority. Suppose, for instance, that the plaintiffs in this case had appeared in the bankruptcy proceeding and resisted the petition on the ground that the district was not insolvent or that the proposed composition or reorganization was unfair; and suppose, further, that they did not in the district court raise any question as to the constitutionality of the bankruptcy act. Had they then taken an appeal after the district court rendered its decree of March 28, 1936, we do not believe that the Circuit Court of Appeals would have passed upon the constitutionality of the act. That question, not having been raised in the lower court, could not be raised upon appeal.

Wong Tai v. U. S., 273 U. S. 77, 47 Sup. Ct. 300, 71 L. Ed. 545.

[fol. 114] New York ex rel Rosedale Realty Co. v. Kleinert, 268 U. S. 646, 45 Sup. Ct. 618, 69 L. Ed. 1135.

An appeal could then have been taken to the Supreme Court of the United States with the same result. Had the two appellate courts affirmed the trial court, then certainly these plaintiffs would be bound by that decision, and even though later in a subsequent case where the constitutional issue was raised the Supreme Court held the act unconstitutional, still, in that instance it would not relate back and enable these plaintiffs to recover the full face amount of their bonds. In such an instance we do not believe there would even be any contention made that the bankrupt-

decree was wholly void, and therefore could not be pleaded as res judicata.

We cannot conceive of any reason why these plaintiffs should be any better off for not having appeared and appealed from the decree than they would have been had they taken such action. To so hold is to allow the plaintiff to do indirectly that which they could not have done directly.

We accordingly respectfully submit that a rehearing should be granted and that the cause should be reversed and remanded for a new trial.

Respectfully submitted, James R. Yerger, Lake Village, Arkansas. Grover T. Owens, S. Lasker Ehrman, E. L. McHaney, Jr., Little Rock, Arkansas, Attorneys for Appellant.

[fol. 115] *Duly sworn to by E. L. McHaney, Jr. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 116] IN UNITED STATES CIRCUIT COURT OF APPEALS

**ORDER MODIFYING OPINION AND DENYING PETITION OF
APPELLANT FOR A REHEARING—May 18, 1939**

On consideration of the petition for a rehearing filed by counsel for appellant, It is ordered that the opinion of this Court, be, and is hereby, modified by striking out and eliminating therefrom the sentence appearing on page 3 of the printed opinion reading as follows: "It had no jurisdiction of compositions." and substituting in lieu thereof the following: "Its powers of compositions were fixed and limited by statute."

The petition for rehearing is hereby denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

**MOTION OF APPELLANT FOR STAY OF ISSUANCE OF MANDATE—
Filed May 22, 1939**

Comes the appellant, Chicot County Drainage District, and moves the court to stay the issuance of mandate in

the above entitled cause under the provisions of Rule 19
and for cause states:

That the appellant intends to apply to the Supreme Court of the United States for a Writ of Certiorari to review the decision of this court.

Wherefore, appellant prays that this court stay the mandate for a period of thirty days, pending such application as provided in said rule.

Grover T. Owens, S. Lasker Ehrman, E. L. McHaney, Jr.

[fol. 117] IN UNITED STATES CIRCUIT COURT OF APPEALS

[File endorsement omitted]

ORDER STAYING ISSUANCE OF MANDATE—May 24, 1939

On Consideration of the motion of appellant for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari. It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

[fol. 118] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 119] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

[Endorsed:] File No. 43,529 U. S. Circuit Court of Appeals, Eighth Circuit, Term No. 122 Chicot County Drainage District, Petitioner, vs. The Baxter State Bank and Mrs. Lena S. Shields. Petition for a writ of certiorari and exhibit thereto. Filed June 19, 1939. Term No. 122 O. T. 1939.

(4185)